

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 11,698

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED MAR 18 1953

FRED B. MONEY

VS.

Joseph H. Stewart
Appellant
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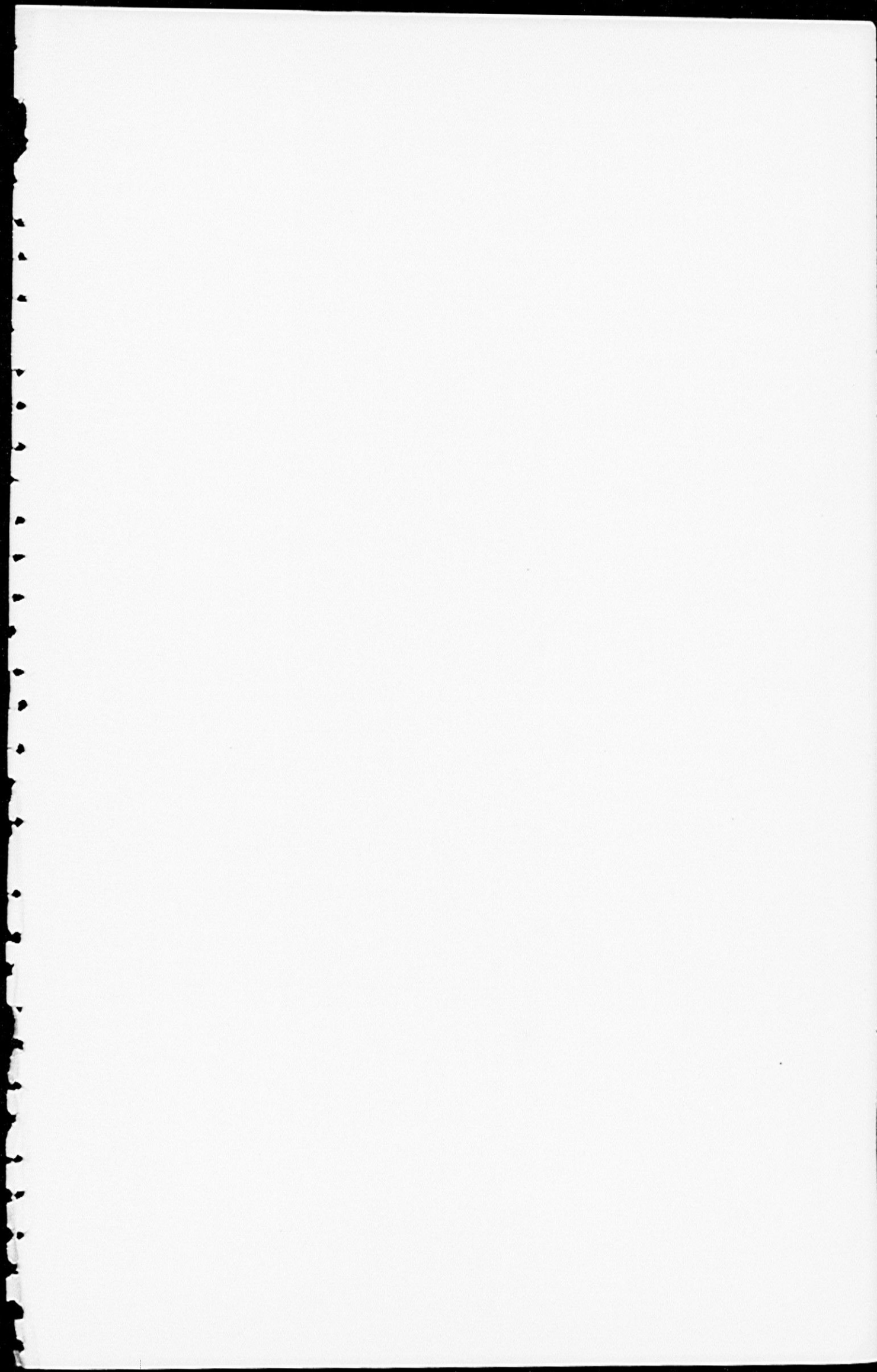
ROBERT B. ANDERSON, Secretary, Department of the Navy
Appellee.

Appeal from the United States District Court
for the District of Columbia

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No. 11698

QUESTIONS PRESENTED

1. Whether the requirements of Statute (5 U.S.C. 652) and Regulation (Section 9.102, Federal Personnel Manual, P. Z-1-249) that for removal of an employee from a position in the classified civil service of the United States charges against him must be stated "specifically and in detail" are met by the following charges:

"1. Charges of immoral or notoriously disgraceful conduct are hereby preferred against you, the nature of which is as follows:

(a) That during the month of March 1943, at a birthday party given in your honor in Shop 23 by the women employees of your shop, you did kiss these women employees present and made further advances to at least two of them, which actions on your part were resented by these employees.

(b) That in or near National Park, N. J., over a period of years, you have had abnormal sexual relations with, and have made advances to, girls in their teens; that these occurrences continued as recently as eight or nine months ago.

2. Whether this suit is barred by laches.

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11698

FRED B. MONEY

Appellant

v.

ROBERT B. ANDERSON, Secretary, Department of the Navy

Appellee

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from an order of the United States District Court for the District of Columbia, granting the appellee's Motion for Summary Judgment and denying appellant's Motion for Summary Judgment. (App. 53A) The District Court had jurisdiction under the provisions of Section 1331, Title 28, U. S. Code. This Court has jurisdiction under the provisions of Section 1291, Title 28, U. S. Code.

STATEMENT OF THE CASE

The appellant seeks adjudication that his removal from his position in the classified civil service of the United States on January 25, 1944 was illegal, and an order requiring his restoration to said position retroactively effective to the date of his removal therefrom.

For many years prior to his removal from his position appellant had civil service status and had occupied a civil service position as "Master Mechanic—Forge Shop" in the United States Naval Shipyard, Philadelphia, Pa. He was suspended from that position on January 25, 1944 without any written reason whatever, and upon the oral charge only of "improper relations with women". (App. 3A-4A) The only written charges given him were in a letter dated January 31, 1944, as follows:

"1. Charges of immoral or notoriously disgraceful conduct are hereby preferred against you, the nature of which is as follows:

(a) That during the month of March 1943, at a birthday party given in your honor in Shop 23 by the women employees of your shop, you did kiss these women employees present and made further advances to at least two of them, which actions on your part were resented by these employees.

(b) That in or near National Park, N. J., over a period of years, you have had abnormal sexual relations with, and have made advances to, girls in their teens; that these occurrences continued as recently as eight or nine months ago.

2. Due to the charges as indicated above, you are hereby suspended from duty without pay pending action in your case. You are hereby given 3 days from the date hereof to make any reply in writing which you consider appropriate to the charges, and to show cause why you should not be discharged." (App. 20A)

Upon these charges his removal from his position was directed by decision of the Secretary of the Navy on April 18, 1944. (App. 28A) While removal from his position was fixed as of the time of expiration of his accrued annual leave, he was actually out of his position from January 25, 1944 on compulsory annual leave, and he is entitled to be restored as of that date.¹ Additional facts relating to the defense of laches are stated hereinafter in connection with the argument on that point. (*infra* p. 18-21)

POINTS RELIED UPON BY APPELLANT

1. Appellant claims violation of the procedural provisions of statute (5 U.S.C. 652, *infra* p. 3-4) and regulations issued under authority of the statute (Section 9.102, Federal Personnel Manual, p. Z-1-249, *infra* p. 4) in that the written charges against him were not specific and in detail.

2. This suit is not barred by laches.

STATUTES AND REGULATIONS

Section 652, Title 5, U. S. Code, as amended, provides:

"No person in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the

¹ The initial action against appellant suspending him on January 25, 1944 was upon the oral charge of "improper relations with women". This was a plain violation of the statute since even suspension is permitted only upon written charges, specific and in detail. While this alone would require restoration to duty, it would not clear appellant's record of the later serious and defamatory written charges against him, and he has chosen therefore not to urge this particular defect in the Department's procedure.

same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. Copies of the charges, the notice of hearing, the answer, the reasons for removal or suspension without pay, and the order of removal or suspension without pay shall be made a part of the records of the proper department or agency, as shall also the reasons for reduction in grade or compensation; and copies of the same shall be furnished, upon request, to the person affected and to the Civil Service Commission."

Regulations of the United States Civil Service Commission (Section 9.102, Federal Personnel Manual, Page Z-1-249) provide:

"No employee, veteran or nonveteran, shall be separated, suspended, or demoted except for such cause as will promote the efficiency of the service and for reasons given in writing. The agency shall notify the employee in writing of the action proposed to be taken. This notice shall set forth, specifically and in detail, the charges preferred against him. The employee shall be allowed a reasonable time for filing a written answer to such charges and furnishing affidavits in support of his answer. He shall not, however, be entitled to an examination of witnesses, nor shall any trial or hearing be required except in the discretion of the agency. If the employee answers the charges, his answer must be considered by the agency. Following consideration of the answer, the employee shall be furnished at the earliest practical date with a written decision. If the agency determines that removal or other action is warranted, the employee shall be notified in the decision of the reasons for the action taken and its effective date. Copies of the charges, notice of hearing (if any), answer, reasons for removal, or other action, shall be made

a part of the records of the department or agency concerned."

SUMMARY OF ARGUMENT

I

The charges upon which appellant's removal from his position were rested did not meet the requirement of statute and regulation for specificity and detail.

A. The statutory requirements must be adhered to strictly to insure the protection to employees intended by Congress. B. (1) The particular provisions invoked by appellant are those requiring all charges to be in writing and to be stated specifically and in detail. We may not speculate that appellant may have had information, not stated in writing, and we must test the written statement from the point of view that the person charged is innocent. Upon this basis determination is to be made whether in the written statement of charges itself appellant was given sufficient information to provide him a fair chance to defend himself.

(2) Neither of the charges against appellant met the requirement for specificity and detail under the standard enunciated by this Court in *Deak v. Pace*, 88 U.S. App. D.C. 50, 185 F. 2d. 997. That appellant asserted his innocence by way of general denial, that he attempted to destroy the veracity of certain persons, suspected but certainly not known by him to have made false statements against him, and that he refuted an affidavit of one person known to have given a false statement against him do not, jointly or severally, cure the defect in charges too general in themselves to meet the statutory requirements.

(3) It is not enough that one of the charges may have been sufficiently specific and in detail. It cannot be ascertained from the record that his removal was predi-

cated upon one charge or the other, but it must be assumed that both charges were relied upon in support of the removal action. Thus, a defect in either charge is to be regarded here as having permeated and vitiated the ultimate decision. Such possibility was recognized in the case of *Deviny v. Campbell*, 90 U.S. App. D.C. 171, 194 F. 2d. 876, wherein the Court stated that all charges ultimately relied upon for removal are required to be stated specifically and in detail.

II

This suit is not barred by laches because: A. Appellant diligently pursued his claim, completely negating any view that he had abandoned it or acquiesced in the action removing him from his position. B. The appellee had knowledge at all times that appellant did not acquiesce in, but continued vigorously to assert error in, the action removing him. C. The relief prayed for in this case would not result in any substantial damage to the defendant and would not result in any damage whatever attributable to any conduct of the appellant.

ARGUMENT

I

The Charges Against Appellant Did Not Meet the Requirement of the Statute and Regulation for Specificity and Detail.

A. The protection to employees intended by Congress to be afforded by the statute invoked by appellant, can be achieved only by strict compliance with all of the statutory requirements. Each separate requirement is important to the simple, yet effective, safeguard provided so that none can be slighted or ignored without substantially defeating the Congressional purpose. Requiring strict compliance with protective requirements of the same

nature provided by the Veterans' Preference Act, the Court of Claims has stated: "These were not little matters. They are of vast concern to the great array of veterans who at least are entitled to a good-faith compliance with the rights granted by a grateful people through their Congress. We cannot set the pattern of trimming away these rights." *Stringer v. United States*, 117 C. Cls. 30, 90 F. Supp. 375. Similarly, in the present case the specific requirements of the Civil Service Act, relied upon by appellant, are not little matters, but are of vast concern to that great array of civil service employees who have devoted their lives to the career service of the government. This Court will not set the pattern of trimming them away.

B. Appellant will here invoke and urge strict compliance with the requirements of the statute and regulation for: (1) a written statement, (2) specific and in detail (3) of all charges against him.

(1) The charges must be presented to the employee in writing. Not only is a written statement of charges expressly required by the statute, but the reason is also made clear. It is required that "copies of the charges, the notice of hearing, the answer, the reasons for removal or suspension without pay, and the order of removal or suspension without pay shall be made part of the records of the proper department or agency * * * and copies of the same shall be furnished, upon request, to the person affected and to the Civil Service Commission". At least two purposes, well designed to insure the intended protections of the statute are served by that requirement. (a) When such a complete record of an action is required to be made and kept, the officer responsible for it is thereby under heavy pressure to ascertain that the action is fair and just, in compliance with law and supported by facts. Experience has taught us that publication of official decisions is one of the strongest guaran-

tees of regularity. (b) The record of an action such as that here under consideration provides the only dependable basis for consideration of it by any reviewing tribunal, such as the Civil Service Commission, or this Court, or possibly the President or Congress or any other officer, or agency, having an interest in whether the law has been complied with. In particular here, while the charges were made and initial decision rendered by the Commandant at the Navy Yard in Philadelphia, final action was taken by the Secretary of the Navy in Washington, D. C. The Secretary's action was based solely upon the written record (App. 29A) and his decision was no sounder than the record information upon which it was based. The requirements for specific and detailed charges with answer thereto were obviously designed, in part at least, to insure that the Secretary would have adequate information to support his decision. Without adequate information there can be no "good-faith compliance" with the statute referred to in the *Stringer* case (*supra* p. 7). As to the necessity for independent decision by the Chief Administrative officer of the agency see *Kutcher v. Gray* U.S. App. D.C. 199 F.(2) 783.

By reason of the clear requirement for written charges we are here restricted to the written record made in the Department. The Court will not speculate as to what appellant might have known from some collateral source, but will look only to the written statement of charges and predicate its decision only upon the information conveyed by that statement.²

² In this particular the present case is different from *Deak v. Pace*, 88 U.S. App. D.C. 50, 185 F. 2d. 997. That case was governed by a wartime statute providing a particular procedure for removal of employees in certain instances in the interest of security. It did not require a written statement of charges but only that the employee be fully informed of the reasons for such removal. Oral information satisfies the requirement of that statute and it seems likely that no written statement at all was contemplated.

Any assumption that an employee receiving only general charges, knows details not stated, is only an assumption that he is guilty, whereas the purpose of the statute is protection of the innocent. From an advance assumption of guilt in justification of general charges it must follow: (a) that a guilty person has an effective right to answer while an innocent person is denied that right and (b) that an innocent person will answer at his peril, since his reference to any of the detailed facts in the mind of the author of the charges, however accidental or inadvertent, will establish his knowledge of the charges. We submit, therefore, not only that we are here restricted to the written statement of charges, but we must examine it from the point of view of a person who is innocent and who in fact does not know anything about the matter except that which is stated in writing.

Thus, in a case of this character, the question to be answered is, does the written statement by itself provide sufficient information to an innocent person so that he will have a fair chance to defend himself.

(2) Neither of the charges in the present case satisfies the requirement for specificity and detail. We submit that this Court's decision in *Deak v. Pace*, 88 U.S. App. D.C., 50, 185 F. 2d. 997, is decisive on this point in favor of appellant. The requirements of the statute there construed are, at most, no more exacting than those of the statute under consideration here, so that the standard for compliance with the statute in this case requires at least as much detail and specific statement as in the *Deak* case. In that case the court also had before it an administrative order requiring that such information be furnished to the employee "as will provide him a fair chance to defend himself". But the purpose of the statute here invoked certainly requires nothing less than that the employee shall have a fair chance to defend himself. In that case it was held:

"We think that in keeping with the plain terms of the statute and the Secretary's order the information must be sufficient to inform the employee with reasonable certainty and precision of the cause for his removal. Only thus can he, upon receiving the information, take full advantage of the right granted by the statute to 'submit, within thirty days thereafter, such statement or affidavits, or both, as he may desire to show why he should be retained and not removed.' To avail themselves of this right it is important that appellants be informed of the dates, places and organizations referred to in the stated reasons for their removal. Otherwise they cannot have a fair opportunity to show reasons for reinstatement, which the statute holds out to them. They are deprived in large measure of the right to clear their names and appeal for reinstatement. To what specific thing could appellants' statements or affidavits be directed beyond their own general denials? Yet, with the specifications indicated, convincing proof might be obtainable to show their innocence."

The first charge against appellant was that during the month of March 1943, at a birthday party given "in your honor in Shop 23, by the women employees of your shop, you did kiss these women employees present and made further advances to at least two of them, which actions on your part were resented by these employees." (App. 19A) As pointed out above, we must examine this charge from the point of view of a person innocent of any wrongdoing to determine whether on its face it provides sufficient information for an innocent person to have a fair chance to defend himself. But we have even more here than an assumption of innocence. We have appellant's statement of his own understanding of the situation referred to, which, not being disputed and no motion for summary judgment, is to be accepted as true. Appellant states:

"On this occasion a birthday cake was presented to me and I was escorted to the center of the room and to the end of a table under a sign which I afterwards noticed had the words "Lots of Luck and Kisses".

The women then crowded around me and showered me with kisses. I was much embarrassed by the situation, but tried to accept it in good faith. Similar incidents have often taken place throughout the Navy Yard at Christmas. I absolutely deny that any improper advances were made by me to any woman participating, nor was any resentment showed by anyone. The entire affair appeared to be a happy occasion among all present. I had no knowledge whatsoever of the planning of this affair until I entered the room where it was held. I accepted the spirit of the occasion as a mark of goodwill on the part of women employees intended to demonstrate a cooperative attitude in their work."

Here was a situation ripe for exploitation by any false accuser—a large spontaneous type of party, held nearly a year prior to the date of accusation, without record even of those who attended and without hint during the party or after for nearly a year of any impropriety of conduct or any resentment on the part of anyone. The damage could have been done by a false accuser³ by a report to the Commandant that appellant's conduct at the party was improper and resented by at least two women. Under the practice at the Navy Yard, which is challenged in this law suit, there would be none of the customary restraints upon false accusation. Non-disclosure of the accuser's identity would protect him against liability for libel or slander. A statement not under oath would relieve him from the restraining influence of liability for perjury. General charges would prevent identification of the accuser through independent search.

Moreover, the result desired by a false accuser, of damage to appellant, was almost a certainty. It was highly improbable that he would identify the gravaman of the charge, join issue on it and refute it. At least it was a matter of chance with long odds against ap-

³ Upon the facts in this case the conclusion is inescapable that it was a false and malicious accuser. See *infra*, p. 16.

pellant. Theoretically, he could have covered the field by obtaining an affidavit from each of the persons present. But practically he had no record of attendance and had no means of identifying all who were there. When the charges were presented to him more than ten months had elapsed since the occasion of the party. It is certainly doubtful, also, that he could have contacted all persons present. Normal resignations and transfers of employees during a ten month period in 1943 would have accounted for absence from the Yard of some of the employees who attended the party. In this connection it may be noted that appellant was given only three days in which to answer (App. 20A). This time was never formally extended so that even upon the assumption that consideration was given to material submitted by him after the expiration of three days, although this is not clear, (cf. App. 39A) the fact remains that he was under heavy pressure of time limitation. Thus the vice of general charges was made even more burdensome by the limited time to analyze them and determine their meaning.

On the other hand there is no reason why the issue should not have been directly and simply drawn by disclosure of the names of the two women allegedly resenting appellant's conduct. Affidavits from them would quickly have established whether the alleged resentment in fact existed or whether the report of resentment was false. It may have been shown that they were not even present at the party. In any event, disclosure of the names of the supposedly offended persons would have eliminated guess and speculation and would have provided the foundation for prompt ascertainment of the true facts and for fair decision upon them. This we submit is the minimum purpose of the statute. The statutory right to answer and to have the answer considered is a farce unless the answer can be drafted with at least reasonable assurance that it is responsive to the subject matter in the mind of the author of the charges.

The second charge against appellant is so obviously bad that little if any discussion of it seems necessary. It reads: "That in or near National Park, N. J., over a period of years, you have had abnormal sexual relations with, and have made advances to, girls in their teens; that these occurrences continued as recently as eight or nine months ago."

Much of what has been said above regarding the first charge is applicable here and need not be repeated. It may be pointed out, however, that National Park, N. J., is not a park but a city. Also, the District Court seems to have been of the opinion that this charge lacked the necessary specificity and detail, but thought error in this respect was overcome by appearances from plaintiff's answer to the charges that "he was fully aware of the fundamental nature and character of the same. He completely denied the allegations and apparently attempted to destroy the veracity of certain individuals who had given affidavits concerning the charges." (App. 52A)

We have shown (*supra*, p. 7-8) that in this proceeding we must look to the written charges only, without speculation as to what appellant may have learned through his independent efforts of investigation or collaterally from any other source. Moreover that appellant completely denied the allegations, as any innocent person would, lacks any significance whatever, we submit, in relation to the question of whether the charge was specific and in detail. Without any knowledge of the nature of the charge at all, denial of guilt would be the prompt reply of a person who believed himself innocent of wrongdoing. We respectfully urge, therefore, that appellant's denial of wrongdoing in response to a general charge affords no basis for a sound conclusion that he had any information regarding the details of the charge.

As to the claimed attempt to destroy the veracity of certain individuals, there is, we submit, no basis for a

conclusion that he knew what was in the mind of the Commandant when he made the charges. We can only speculate that by happy chance appellant may have hit upon the right subject matter or part of it. There is no reasonable assurance that he did. In a letter to the Commandant appellant stated: "Being uninformed of witnesses against me and searching my mind for accusers, I tender the following list of my known enemies, any one of whom either separately or in conspiracy with others may have welcomed an opportunity to defame me, *only provided* that they were not required to face me and be confronted and risk certain legal action against them." (App. 11A-12A) We think this letter, far from indicating that appellant had detailed information about the charges, strongly supports our contention to the contrary. The letter contains not a word of defense on the merits of the charges, but shows the helpless situation appellant was in. Of course the right to answer provided by the statute contemplates something more than the right to speculate that some one or more enemies may have said something in support of the charges, and to discredit the entire list.

The only person within the scope of the District Court's opinion would seem to be Ruth Williams. At least she was the only person known by plaintiff to have submitted an affidavit to the Department concerning him. He did submit an affidavit of Ruth Williams and of her husband repudiating statements which she had earlier given to a Department investigator (App. 24A-28A) Appellant did not know nor does he now know, nor can this Court know, whether claimed improper relations with Ruth Williams were embraced within the charges against him. He learned through his own investigation (not from information given him by the Department) that she had given a statement to Department investigators, (App. 22A) and he attempted to refute it upon the chance that it was part of the evidence against him.

An assumption that through his diligence he had thus uncovered and answered part of the charge against him would not show satisfaction of the purposes of the statute. The charge was in the plural, "girls in their teens", so that at least one in addition to Ruth Williams was said to have been involved. As to how many additional girls were supposedly involved and their identity, appellant had no knowledge and of course made no attempt to answer concerning them. For all that appears in the record the Commandant may have accepted appellant's defense as to Ruth Williams, but based his final action upon claimed improper relations with others as to whom defense was neither made nor possible.

It is enough to support appellant's position that the charges were not sufficiently specific and in detail and we do not need to specify charges required to bring them into compliance with the statute. We see no reason why, as a matter of ordinary fairness and accuracy, persons, times and places should not have been made specific, especially in view of the nature of the charges which go far beyond appellant's entitlement to his position, and to the general destruction of his character and reputation. Possibly the names of the persons involved would have sufficed. Even a reasonably restricted statement of time and place would have made possible a showing that he was elsewhere. Without any of these details, however, he had no fair chance and the protection of the statute was effectively denied to him.

We are not left to speculation here as to the practical advantages of detailed and specific information. The record shows the practical results actually achieved when some of the facts were ultimately ascertained.

As to Ruth Williams, we have already shown that appellant was able to obtain direct repudiation of the basis of possible claim of misconduct involving her. There is

forceful substantiation of the effectiveness of this repudiation. The Navy Department investigator made a report concerning appellant and Ruth Williams to the prosecutor of Gloucester County, N. J., appellant's home and the place where the claimed misconduct is said to have occurred. (App. 33A) The prosecuting attorney, admitting that the charge was very serious, initially based his failure to prosecute upon appellant's absence from the county (App. 39A). However, appellant, with knowledge of the announced views of the prosecutor, not only remained in the county, but expressly advised the prosecutor of his continuing presence there and invited prosecution (App. 40A). He was not prosecuted.

As to at least some of the other persons who had made statements against him, appellant also cleared himself when, after diligent and expensive investigation, he ultimately ascertained more details, long after his removal from his position. He brought suit for libel and slander against four persons who had submitted statements concerning him to the Department, and which the Department had used as support in part at least of the charges against him. Upon proof, including proof that the statements were false, appellant recovered judgment in the total amount of \$5300. That \$5000 of this was punitive damages indicates a finding also that the statements were maliciously false. (App. 37A)

3. We have previously urged that neither of the charges met the statutory requirement of specificity and detail. Should it be considered that one of them met the statutory requirement and the other did not, appellant would nevertheless be entitled to the relief he seeks. This is so because of the express language of the statute and because otherwise the purpose of the statute could be readily defeated. The statute requires that an employee whose removal is proposed shall have a copy of "any charges preferred against him" and the regulation re-

quires that the written notice "shall set forth, specifically and in detail, the charges preferred against him". Obviously this language means *all* of the charges, not one or part of the charges.

Moreover, if specific and detailed statement of one or some of several charges were held to be sufficient, the statute could be nullified at will. Any official desiring to remove an employee could do it without cause but with assurance that his illegal act would never be discovered. The technique would require only the statement of one specific charge and another too general to be answered. Neither would need to be well founded in fact. Presumably the employee would answer the specific charge by complete refutation of it; but for lack of essential information he would be unable to provide any convincing answer to the general charge. The official could find in favor of the employee on the specific charge, but against him on the general charge. He could sign that kind of a decision without fear that he would ever be called to account for the injustice he had perpetrated. This situation seems to have been contemplated by the Court in *Deviny v. Campbell*, 90 U.S. App. D.C. 171, 194 F. 2d, 876. While the Court pointed out that all ten reasons in that case met the test of specification it further stated "We think the statute means that all reasons upon which a discharge ultimately rests must be specific." Nothing to the contrary appearing, it must be assumed that appellant's dismissal was ultimately rested upon both of the charges against him.

II

THIS SUIT IS NOT BARRED BY LACHES

In the court below appellee asserted the defense of laches, and presumably will do so here. Not expressly indicating decision one way or the other on this point, the District Court based its decision on the conclusion

that the charges against appellant were sufficiently specific and in detail to meet the requirements of the statute. (App. 52A) In the event of reversal on the merits, however, it would seem to be appropriate for this Court also to indicate its view on the question of laches as a means likely to shorten the litigation. In a case submitted as this one was, wholly on a written record and on motions for summary judgment, this Court is in as good a position as the trial court to decide the point.

No hard and fast rule has been or can be stated with regard to laches and each case must be determined upon its own peculiar facts. Nevertheless, decided cases have established a pattern consisting of specific elements as follows: (1) lack of diligence on behalf of plaintiff in pursuing the claim, (2) which induced the defendant to believe that plaintiff's claim was worthless or had been abandoned so that (3) defendant changed its position in such a way that injustice would result from present assertion of the claim. All of these elements are necessary to support the defense of laches. *Galilher v. Caldwell*, 145 U.S. 368, 372; *Southern Pacific Co. v. Bogert*, 250 U.S. 484, 489-490; *United States v. Work*, 13 F. 2d 302, 304, 56 App. D.C., 330, 332, cert. den. 273 U.S. 711; *Shaffer v. Rector Well Equipment Co.*, 155 F. 2d 344, 346. The undisputed facts show that none of these elements are present in this case.

A. Plaintiff has diligently pursued his remedy. After the Secretary of the Department of the Navy approved the action removing him from his position on April 14, 1944 he sought review by the Civil Service Commission. On June 19, 1944 the regional office of the Commission advised that it found no error in the action of the Department in removing him, but further suggested additional grounds upon which the Commission might give the case further consideration. Thereafter, pursuant to plaintiff's letters of March 4 and April 15, 1945, the Civil Service

Commission considered plaintiff's claim further until June 23, 1945. Thereafter on August 6, 1945 and on March 1, 23 and 31, and April 9, 18 and 30, and December 18 and 24, 1946, plaintiff or his representative contacted the Navy Department concerning this claim, seeking access to the records and other information for the purpose of refuting the charges against him (App. 47A-49A). On March 17, 1947 he instituted suit against the Commandant and Director of Personnel of the Philadelphia Navy Yard, seeking the same relief as he seeks here. That suit was dismissed on the ground that the Secretary of the Department of the Navy was a necessary party. That litigation was not finally terminated until May 25, 1951, when the Supreme Court denied a writ of certiorari to review a decision in the case by the United States Circuit Court of Appeals for the Third Circuit (App. 49A-50A). On August 25, 1951 a suit essentially the same as that presented here was filed in this Court, naming the former Secretary of the Navy, Francis P. Matthews, as defendant. Although the said Francis P. Matthews had in fact recently resigned as Secretary of the Navy, the government in that suit filed an answer on or about September 25, 1951 admitting that the said Matthews was Secretary of the Department of the Navy. Upon discovery, however, that both the plaintiff and the defense counsel had been in error in alleging on one side, and admitting on the other, that the said Francis P. Matthews was Secretary of the Department of the Navy, the present suit was filed on April 13, 1952 for the sole purpose of naming Dan A. Kimball, successor to Matthews as Secretary of the Department, as defendant. Otherwise the complaint in this case is exactly the same as that in the earlier one against Matthews. (App. 50A-51A)

Also, plaintiff successfully sued certain individuals in the state court in the State of New Jersey for conspiracy, libel and slander on the ground that said persons had

presented false statements to the Department of the Navy leading to plaintiff's removal from his office. That suit was instituted on August 7, 1945 and terminated by final judgment in plaintiff's favor on February 6, 1950 (App. 37A-38A).

It is thus plain that plaintiff has never acquiesced in the action removing him from his position, but has diligently pursued three courses essential to obtaining the relief he seeks. First, he sought, at great effort and expense, to get the necessary facts. Second, he invoked consideration by the United States Civil Service Commission. Third, he brought suit both in the federal courts against officers of the Department and in the state court against the individuals whose false statements against him led to his removal from his position.

B. The Department of the Navy has had notice of plaintiff's pursuit of his claim, as set forth above, and could not have believed, therefore, that he considered it worthless or that he had abandoned it. cf. *Shaffer v. Rector Well Equipment Co.*, 155 F. 2d 344, 346, *supra*, in which regarding similar circumstances it was stated "It would take an act of legerdemain to draw harrassment on the one hand and lulling to sleep on the other out of the same factual hat." Language of the Court of Claims in a similar case is directly applicable here. In *Elchibegoff v. United States*, 106 C. Cls. 541, 561, it was stated:

"If there was ever a case in which a man was active in trying to secure his rights, the plaintiff was in this instance. He protested all over the lot. He wrote the Civil Service Commission; he wrote the Bureau of Economic Warfare; he wrote the President; he insisted on reinstatement; he filed suit in the United States District Court and finally, after exhausting all other remedies of protesting his rights, he filed suit in the United States Court of Claims."

C. No injury by reason of delay, nor indeed substantial injury from any cause, would result to the defendant or to the United States by granting the relief here prayed for. The relief prayed for is plaintiff's restoration to duty upon the ground that his removal therefrom was illegal and invalid. Back salary is not involved and could not be granted by this Court because of express statutory prohibition (United States Code Title 28, Section 1346(d)). If plaintiff is restored to duty the Department would have the election here to accept his services prospectively and pay him for them, or to reassert the charges against him in the manner prescribed by law, and if the charges should be established thereby, the Department would have authority to remove him from his position. He could even be put on leave without pay while the reasserted charges against him were under consideration if the Department regarded that as appropriate for the protection of the government's interests. If the charges were not proved or if the Department determined not to reassert them, the only inconvenience to the government would be that of office adjustment to find a place for him to work. But that would have been necessary within a few weeks or at most within a few months after he was removed from his position, and could not be attributed to delay by the plaintiff. It will be time enough to assert laches on the basis of injury to the government for back salary when and if a claim for back salary is asserted. In the present case appellant probably has no claim for back salary because his earnings since he was removed from his position, which have been large, would constitute an offset against a claim for salary. *Jackson v. United States*, 117 C. Cls. 30, 90 F. Supp. 375.

In *Gardner v. Panama Railroad Co.*, 342 U.S. 29, it was pointed out: "Where there has been no inexcusable delay in seeking relief and where no prejudice to defendant has resulted from the mere passage of time, there should be no bar to relief. *The Key City*, 14 Wall. 653 (1872);

Southern Pacific Co. v. Bogert, 250 U.S. 483 (1919); *Holmberg v. Ambrecht*, 327 U.S. 392 (1946). See *McGrath v. Panama Railroad Co.*, 298 F. 303-304 (1924).” The *Gardner* case, as the present case, involved delay by reason of earlier litigation against the wrong parties. In that case the delay was short, but in the cited case of *Southern Pacific v. Bogert*, the delay was 22 years. There, as here, there had been litigation against the wrong parties by some of the persons of a large class similarly situated. The Court held:

“More than 22 years had thus elapsed since the wrong complained of was committed, but the essence of laches is not merely lapse of time. It is essential that there be also acquiescence in the alleged wrong, and lack of diligence in seeking a remedy. Here plaintiffs, or others representing them, protested as soon as the terms of the reorganization agreement were announced; and ever since they have, with rare pertinacity and undaunted by failure, persisted in the diligent pursuit of a remedy as the schedule of earlier litigation referred to in the margin demonstrates. * * * nor does failure, long continued, to discover the appropriate remedy, although well known, establish laches where there has been due diligence and, as the lower courts have here found, the defendant was not prejudiced by the delay.”

CONCLUSION

It is respectfully submitted that the judgment of the court below should be reversed with direction to grant appellant's motion for summary judgment.

KEITH L. SEEGMILLER
Attorney for Plaintiff

WILLIAM J. WOOLSTON
Of Counsel

APPENDIX

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,698

FRED B. MONEY,

Appellant,

v.

DAN A. KIMBALL, Secretary of the Department of the
Navy,

Appellee.

Appeal from the United States District Court
for the District of Columbia

JOINT APPENDIX

1 Filed Apr 3 1952 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRED B. MONEY
Thorofare, New Jersey
Plaintiff,

v.

DAN A. KIMBALL
Secretary of the Department of the Navy
Washington, D. C.
Defendant.

Civil Action No. 1460-'52

*Complaint for Illegal Separation from Government
Service*

1. This Court has jurisdiction under Sections 1331 and 1332, Title 28, United States Code (September 1, 1948) or Section 306, Title 11, D. C. Code (1940).

2. Plaintiff is a citizen of the United States and a citizen and resident of the State of New Jersey. The defendant is the Secretary of the Department of the Navy of the United States.

3. The plaintiff applied for and obtained employment at the U. S. Naval Shipyard, Philadelphia, Pennsylvania under the rules and regulations of the United States Civil Service Commission and by virtue thereof, after having taken a competitive examination, obtained employment as a permanent Civil Service employee in April of 1932. The position obtained by the plaintiff at that time was "Foreman Mechanic Forge Shop". The plaintiff was promoted from that position in May of 1938 to that of

"Master Mechanic Forge Shop", continuing as a permanent Civil Service employee. As a "Foreman Mechanic Forge Shop", the plaintiff received a daily rate of pay of \$11.04, and as "Master Mechanic Forge Shop", the plaintiff received a daily rate of pay of \$18.40.

4. The plaintiff was employed continuously as a permanent Civil Service employee in the positions described above from April, 1932 until January 25, 1944. During all of said period his efficiency rating was "excellent".

5. On January 25, 1944, the plaintiff received a written order signed by Commandant M. F. Draemel of the U. S. Naval Shipyard, Philadelphia. This ordered the plaintiff to appear forthwith at the Commandant's office to receive disciplinary action for charges which would be preferred against him verbally, and further provided that the plaintiff would thereafter be given forty-eight hours in which to make a reply to said charges. A true and correct copy of this written order is attached and made part hereof as Exhibit "A".

6. Plaintiff appeared at the Commandant's office on January 25, 1944 as ordered in said Exhibit A and at that time the charge preferred against him orally was "improper relations with women". Neither the Commandant nor any other person gave to the plaintiff any explanation of, nor any particulars whatever about the alleged improper relations with women. The plaintiff denied the truth of this charge and requested an explanation of or particulars about the charge so that he might reply thereto within the allotted forty-eight hours. Despite this request the Commandant refused to give the plaintiff any explanation of or particulars about said charge and has so refused at all times to the present, except as stated in paragraph 9 *infra* and Exhibit "F".

7. At the time of said appearance at the Commandant's office on January 25, 1944, the plaintiff was then

and there suspended from his employment at the Philadelphia Naval Shipyard and was thereupon excluded from the yard and denied access to his files and to fellow employees. Information could have been obtained from both said files and from said fellow employees likely to have been of value to plaintiff in preparing an answer to the charges against him. Plaintiff is informed and believes and therefore alleges that the Commandant at the Philadelphia Naval Shipyard or others under his direction and supervision advised and threatened plaintiff's fellow employees and some other persons in the vicinity of plaintiff's residence not to confer with plaintiff or to assist or aid him in seeking any statements or affidavits to support his answer to the charges against him.

8. Despite the Commandant's refusal to supply the plaintiff with any explanation of or particulars about the oral charge, the plaintiff addressed to the Commandant, on the next succeeding several days, three written statements which are respectively dated January 26, January 27 and January 29, true and correct copies of which are attached and made part hereof as Exhibits "B, C and D".

3 In addition to the three written statements submitted by the plaintiff, the plaintiff's wife addressed a written statement to the Commandant on January 26, 1944, a true and correct copy of which is attached and made part hereof as Exhibit "E".

9. The plaintiff received no further word regarding said charge until February 1st, when he received a memorandum from the Commandant dated January 31, 1944, a true and correct copy of which is attached and made part hereof as Exhibit "F". This memorandum stated that the immoral relations with women related to:

(a) Events occurring at a noonday birthday party in a regular dining room at the Navy Yard, given by the

plaintiff's subordinates in his honor during the month of March 1943.

(b) That "over a period of years" in or near National Park, New Jersey, the plaintiff had abnormal sexual relations with adolescent girls. The memorandum further stated that the plaintiff was suspended from duty without pay pending action on the charges and given three days in which to reply in writing why he should not be discharged.

10. The plaintiff replied in writing on February 4, 1944, a true and correct copy of which with supporting affidavits is attached and made part hereof as Exhibit "G". The plaintiff's reply denied the existence of any immoral relations with women and further gave a full explanation of all that occurred during the birthday party given in his honor. The accompanying affidavits specifically and fully denied the only possible charge of immoral conduct by plaintiff which he had been able to discover on his own investigation, no specific charges having been given him. The plaintiff thereafter as rapidly as possible, submitted additional statements and affidavits which contained statements of defense against possible though undisclosed accusations by his fellow employees at the Philadelphia Navy Yard, and also affidavits from persons in his home neighborhood to negative possible, though undisclosed accusations from that source. These not only denied the charges but suggested the source of malicious and fraudulent accusations against the plaintiff. Many of these were submitted during the month of February, 1944. By letter dated April 18, 1944, a true copy of which is attached and made part hereof as Exhibit "H", the plaintiff received notice of his discharge as a result of the charge preferred against him. This letter discloses approval of the dismissal by the Secretary of the Navy.

11. Said discharge from his employment as a permanent Civil Service employee was in violation of plaintiff's rights conferred by statute (Section 6 of the Civil Service Act of 1912, 5 U.S.C. 652) in that the reasons for his discharge and the charges preferred against him were not stated with sufficient detail to permit an answer thereto and he was not allowed a reasonable time for answering.

12. Continuously from January 25, 1944 until the present, the plaintiff has diligently sought from the Commandant at the Philadelphia Navy Yard, from the United States Civil Service Commission and from the Department of the Navy a clearer and more detailed statement of charges against him, an extension of the three days limitation for answering the same and his restoration to his former position. Despite such efforts, however, plaintiff has been denied a clear statement of charges and has likewise been denied access to his files or any information regarding the proof deemed to support the charges against him. He has fully exhausted his administrative remedies and now has no other remedy except resort to the Court to have set aside the illegal action taken against him.

WHEREFORE THESE PREMISES CONSIDERED
the plaintiff respectfully prays:

1. That the process of this Court issue requiring the defendant to appear and answer the exigencies of this complaint,

2. That an order be entered herein declaring that plaintiff was illegally discharged from his permanent Civil Service position as Master Mechanic, Forge Shop at the Philadelphia Navy Yard and that said discharge was and is without any legal force or effect,

3. That an order be entered herein directing the defendant to restore the plaintiff to the position from which he was illegally discharged, effective January 25, 1944, and to all rights, privileges and benefits appertaining to said position from January 25, 1944 with
 5 the same standing in all respects that he would have had except for such illegal discharge from said position.

4. For such other further relief that to the Court may seem proper in said premises.

/s/ Fred B. Money
 Fred B. Money

County of Gloucester)
 State of New Jersey) ss.

I, Fred B. Money, being first duly sworn depose and say that I have read the foregoing complaint by me subscribed; that I understand the contents thereof and that all things therein stated as facts are true and those things stated upon information and belief I verily believe to be true.

/s/ Fred B. Money
 Fred B. Money

Subscribed and sworn to before me this 29th day of March, 1952.

/s/ James H. Jones
 Notary Public

My Commission Expires March 26, 1957.

/s/ Keith L. Seegmiller
 Keith L. Seegmiller
 1616 Eye Street, N. W.
 Washington, D. C.
 Attorney for Plaintiff.

• • • •

8 A

6 Filed Apr 3 1952 Harry M. Hull, Clerk

Exhibit "A"

25 January 1944

CONFIDENTIAL

To: Mr. Fred B. Money, Master Mechanic, Forge and
Heat Treating Shop

Via: Manager, Industrial Department.

Subj: Disciplinary action.

1. The Commandant proposes to take disciplinary action against you for charges which, due to their nature, will be preferred against you verbally. You are directed, upon receipt of this letter, to appear in person at his office.

2. You will be given 48 hours to make reply to these charges after the same are preferred against you in this conference.

M. F. Draemel
Commandant

(Added as per stipulation:)

End-1 25 January 1944 2nd Dept. N. Y. Phila.

To: Mr. Fred B. Money, Master Mechanic
Forge & Heat Treating Shop.

1. Delivered. Report to my office at 2:00 P.M. today when I will accompany you at the Commandant's Office.

A. J. Chantry

• • • •

7 Filed Apr 3 1952 Harry M. Hull, Clerk

Exhibit "B"

Fred B. Money, B. C. E., M. E., C. E.
Registered Professional Engineer

Shop 23, Building 57A
Philadelphia Navy Yard
(Home address Box 132,
National Park, N. J.)
26 January 1944

From:—Fred B. Money
Master Mechanic Forge Shop

To:—Mr. F. Draemel, Rear Admiral, U. S. N.
Commandant, Philadelphia Navy Yard

Subj:—Answer to charges:—Proposed disciplinary action.

1. By letter of 25 January I was directed to appear before the Commandant to answer charges "which, due to their nature, would be preferred verbally":—and was informed that the Commandant proposed to take disciplinary action against me:—and was directed to make written reply to the charges within 48 hours.

2. Appearing before the Commandant at 2 PM as directed, I was verbally charged with "Improper Relations with Women". Amazed at such charges, I immediately denied the same and requested statements of facts alleged and names of persons preferring the charges. This information was denied me.

3. I absolutely deny the truth of any charge of "Improper Relations with Women". In 58 years no previous charge against my moral character has ever to my knowledge been made:—and I hold scores of statements from former employers and from Officers under whom I have worked for the past nearly twelve years in the Navy Yard

volunteering testimony as to my "exceptionally high character, efficiency, and productivity."

4. If these charges perchance refer to an occasion in March of last year when the Forge Shop women (then newly employed and unaccustomed to Navy Yard discipline) as a body made me a birthday-cake and invited me to their dining-room during lunch-period and surrounded me singing and playing pranks, my answer is that the circumstances were a total surprise to me and certainly not of my choosing:—and that thereafter I kept all Forge Shop women at rigid distance, made a point never to converse with one except in the presence of others, and before or since have never laid eyes on one outside of the Navy Yard.

5. Owing to my moral courage in exerting constant pressure to secure full production and cooperation from employees I have made two certain known enemies (one of them himself with a court record of extra-marital entanglements) who as evidenced by letter to Commandant of 16 Nov. (via Congressman Wolverton) have joined forces against me, and who have openly threatened bitter retaliation on me, as reported by me to the Management 20 Oct., 18 Nov., 20 Jan., and 24 Jan. I have reason to believe that the fountain-head of these charges lies in one or both of these men executing their threats in the precise manner as forewarned and as of record.

6. If after a full explanation of the above-mentioned Birthday incident (acknowledged to be regrettable) I am still considered blame-worthy for allowing myself to be good-humoredly mauled in public by a score of happy, good-natured and well-intentioned new shop women, then I shall accept without protest any ten-months-belated disciplinary action accorded:—providing it does not involve removal from Mastership.

7. But if the above is not satisfactory to the Commandant, and/or if there be other items in the charge not now known or suspected by me and considered by the Commandant to imply probability of more serious action than the above, then, before such action be taken, I request a written statement of the charges specifying when and where improper acts are alleged to have been committed, with what women alleged to have been committed, and by whom the charges are made. I also request the common right to face my accuser or accusers, and the right of a reasonable opportunity to confute their testimony with my own witnesses including the wife with whom I have lived for 38 continuous years in full love and perfect amity, always.

/s/ Fred B. Money
Fred B. Money

8 Filed Apr 3 1952 Harry M. Hull, Clerk

Exhibit "C"

, C. E.
Shop 23, Building 57A
Philadelphia Navy Yard
(Home address, Box 132,
National Park, N. J.)
27 Jan. 1944

From:—Fred B. Money
Master Mechanic Forge Shop

To:—M. F. Draemel, Rear Admiral U.S.N.,
Commandant Philadelphia Navy Yard.

Subject:—Proposed Disciplinary Action:—Protest on
character of possible witnesses.

1. Being uninformed of witnesses against me and searching my mind for accusers I tender the following list of my known enemies any one of whom either sepa-

rately or in conspiracy with others may have welcomed an opportunity to defame me, *only provided* that they were not required to face me and be confronted and risk certain legal action against them.

2. DOLAN. In my opinion a man with a psychosis:— I think agreed by Lt. Commdr. Watson. Turns white when I address him, and broke into cold sweat when interviewed by Lt. Cmmdr. Watson. Recommended by me on 23 Dec. for medical examination:—no action. When questioned by Lt. Commdr. Kelley (who is believed to consider Dolan out of step) on a sick-leave application in which Dolan *denied* attending anti-wage-tax meeting in N. J. on 23 December. Others report that Dolan DID attend, in company with a Mrs. Paul Amber, and was stationed on the right side near the entrance. It is believed that this one thing, properly investigated, will prove Dolan's attitude of falsehood. On 4 Jan. recommended by me for demotion. No action, at least as yet.

3. MRS. DOLAN. Highly emotional, fluent and constant talker, unbecomingly aggressive, insatiably greedy and deceitful, and an inveterate malicious gossip. Constantly drives her car from neighbor to neighbor. Talked Jersey Gas Board out of B and/or C coupons and new tires. Daily drives her husband back and forth to ferry, though less than a mile, no other passengers, and a bus runs by the door. In July drove to Indiana. When sick in November and unable to get other nurse she begged, accepted and received the nursing services of my wife, AFTER having (as then unknown to us) made affidavit against me forwarded to Commandant in Etter case.

4. ETTER. Close friend of the Dolan's. Named as correspondent in divorce case. Freely related to other Supervisors his long extra-marital connections with a Miss Haines of Strawbridge and Clothiers. Fined as a

night hit-and-run driver when accompanied by an acknowledged mistress. Threatened to ruin my reputation if a case of his misconduct in the shop "were not withheld from the ears of the Management", said threat being reported to Shop Superintendent 30 October.

5. PAUL AMBER of 31 Shop, and his wife "Violet":—close friends of the Dolan's. Reference to a long letter to Commandant dictated by Amber and inscribed by his wife some 3 months ago depicting the alleged universally rotten conditions in 31 Shop and throughout the Yard in general will correctly establish the attitude and the credibility of this couple.

6. SUSAN PANE, woman in 23 Shop. Close friend of Etter and known to associate with him outside the Yard. Exceptionally giddy and sex-conscious and regarded by all present Supervisors as highly dangerous. Obscene talker. Well-nigh impossible to keep men away from her in the Shop, and vice-versa. In ordinary times she would have been recommended for dismissal as a nuisance, but in these days it takes a lot of courage on the part of a Supervisor to prefer charges. She is disgruntled because not promoted.

7. MARIE COOK, woman in Forge Shop. Disgruntled because not promoted. Alleges race-discrimination (false:—absenteeism). Other women in the shop are disgruntled because not considered worthy of promotion and in pure spite may have made false charges.

9 8. L. S. HENLY of National Park:—close friend of the Dolan's. Nearly 80, and long considered "queer". Let the air out of 4 tires of Arthur Sellers, Master in N. A. F. Wrote anonymous letter (identified) to Sterling Martin of National Park threatening to blow up his store. Wrote anonymous letter to me (identified and will be gladly produced) threatening to destroy my property. Upbraided for this, he hates me

most deeply. When in Navy Yard called Harry Mauk of 02 Shop to come in out of heavy rain and *immediately* called Yard Police to arrest Mauk for loitering. Once lost \$785, in case of Transportation Association funds which was found by me and returned to him where-upon instead of being pleased he was actually *angry*, as so reported to Frank Bonsack, then Association President. Henley constantly and violently quarrels with City Council and with neighbors:—see Wm. Jones, the V. Pres. Transportation Co., Arthur Sellers (Master in N. A. F.), Harry DEVault, Craneman in 11 Shop.

9. The STARR Family:—Relatives of Henley's who share his hatred of me, especially for facing them with their derogatory talk of my wife's niece, who afterwards in face of their bitter opposition married Thomas Starr.

10. A MRS. REDDY formerly of National Park:—Recommended to me by Henley for a loan of \$40. and threatened to "make trouble for me" if collection were attempted.

11. If these be witnesses who separately or in conspiracy for revenge on me falsely accuse me of immorality I shall be most pleased to face and confute them:—and happy to face any other possible witnesses on this preposterous and trumped-up charge.

/s/ Fred B. Money

Fred B. Money

• • • •

10 Filed Apr 3 1952 Harry M. Hull, Clerk

Exhibit "D"

, C. E.
Shop 23, Building 57A
Philadelphia Navy Yard
(Home address, Box 132,
National Park, N. J.)
Phone Woodbury 1831-R-1-1
29 January 1944

From:—Fred B. Money

Master Mechanic Forge Shop

To:—M. F. Draemel, Rear Admiral U.S.N.,
Commandant, Philadelphia Navy Yard

Subject:—Proposed Disciplinary Action.

1. Necessarily fighting as yet blindfolded, after much thought I consider that the persons falsely accusing me of immorality, either individually or in conspiracy, are probably as follows:—

2. ETTER, with a bad record in and out of the Yard, and a blackmailer of record. Recommended by me for disciplinary action and resigned, but in revenge continues conspiracy against me:—as late as Thursday Jan. 27th he was reported in the Navy Yard and in 11 Shop and 41 Shop spreading the word "That Mr. Money was fired and that he (Etter) would be back in the Yard on Feb. 1st as Master of the Forge Shop". (See Quarterman Machon, of 23 Shop.)

3. DOLAN, Etter's close friend and collaborator:—disgruntled, and a provable liar:—recommended by me for demotion.

4. MRS. DOLAN, an inveterate busy-body and notorious gossip:—highly aggressive and unprincipled:—be-

lieved (with cause) to be the writer of an anonymous letter to me threatening to destroy my reputation if Mr. Etter were not reinstated.

5. SUSAN PANE, an obscene woman, highly sex-conscious, and a known close friend and associate of Etter's:—disgruntled and vindictive because not promoted faster. She has proclaimed "That Mr. Money fired the only Supervisor in the Forge Shop (Etter) who knew anything about the work".

6. L. S. HENLEY, a notoriously "queer" senile whom I apprehended for sending me 27 Aug. 1941 through the U. S. Mails an anonymous threatening letter (which offense is still at this late date actionable, as I am advised by Counsel). This was written because of his bitter opposition to the marriage of my wife's niece to his nephew and stepson, Thomas Starr. It is now uncovered that on Wed. 17 Sept. 1941 Henley assured Frank Bon-sack (then President Transportation Association) "that if Money tried to connect him (Henley) with said anonymous letter, he (Henley) would utterly destroy the character, reputation, and standing of Mr. Money." Provable. The anonymous letter, fully identified, is available for inspection.

7. I consider that the outcome of this case will establish in all Navy Yards the precedent as to whether a disgruntled employee recommended for disciplinary action can, by charges against his Supervisor of immorality (the easiest and the most devastating charge to make, and the hardest to prove or to disprove, and certain to leave its mark whether proved or disproved) set Naval Intelligence in motion to investigate both the public and private life of that Supervisor and by the return of reports from the vindictive known enemies of that Supervisor accomplish, in pure revenge, the destruction of that Supervisor exactly as per expressed previous threats and

intentions on their part as duly reported at the time to Management:—and at the same time themselves remain concealed and scathless.

8. If this be not already decided in my favor as a false and malicious accusation trumped up in revenge exactly as promised, then I again demand that my accusers be made known to me (as they till now are not) and that they be made to face me in person with their charges.

9. Many personages have in the past have in voluntary (and available) writing express their highest confidence in me:—and some are coming now and asking what they can do to help me. I am answering that I am as yet fighting in the dark, and alone:—but fighting. My reputation is very previous to me and will be defended.

/s/ Fred B. Money

11 Filed Apr 3 1952 Harry M. Hull, Clerk

Exhibit "E"

National Park, N. J.
January 26th 1944
(or 27th?)

Admiral Draemel, Commandant:—

Dear Sir:

I write in regard to my husband, Fred Money. This is without his knowledge, but I venture to do so anyway.

My husband is a good, clean man. I should know, for we have been happily married since 1905. Any charges of immorality are preposterous. I know these charges must have been carried to the Navy Yard by the Dolans. My husband recommended Mr. Dolan to be demoted, and in company with Mr. Etter he is retaliating out of pure spite.

The Dolans came here incompetent and penniless. My husband guaranteed their board and room. My husband taught Mr. Dolan his trade, and promoted him gradually to about \$5000 a year. I loaned Mrs. Dolan \$1400 to buy a house. Mrs. Dolan often came to our house. She was a tremendous gossip, and tried to mix Navy Yard affairs with friendship. I drew away from her, Mrs. Dolan became angry because her husband was not promoted fast enough. She is extremely aggressive and bosses Mr. Dolan entirely. Mr. Dolan sat down on his work and my husband recommended his demotion. My husband got a threatening letter which matches a Christmas card sent by Mrs. Dolan. Mr. Dolan complained to you, we think, charging perhaps various things, including immorality. Mrs. Dolan must have engineered this.

No man is more moral than my husband. He works and studies incessantly. He teaches school at Temple and at Drexel, two and three nights a week. I know exactly where he is every minute. We have no social life. We do not mix with people. He is always busy and lives in his work. He has more requests for articles and lectures and for engineering work than he can possibly fill. I enclose one of his lectures. If you have patience to read this, you will see exactly the man my husband is.

We have enemies of course. The Dolans and the Etters, because my husband reported them for misconduct. And the Henleys of this village, because my niece married his nephew, against Mr. Henley's will. He talked about my niece and my husband reproved him. He wrote an anonymous threatening letter and my husband identified it and kicked his pants. He hates us from the ground up, and nothing is too bad for him to say about us. He said falsely that my husband tried to kidnap him. My husband reported this to the police. They said my husband should have kicked him harder and more often.

Once my husband loaned \$40 to a Mrs. Reddy. She said if he tried to collect it, she would say my husband tried to date her daughter. Her daughter was a bad girl. So we lost the \$40 because we were afraid of her tongue. In 30 years that is the only time we know of where anybody said or threatened to say anything against my husband's morals. My husband is clean and honorable. Nobody works harder. I never heard him say an obscene word. I never heard him tell a dirty story. He will not have a nude picture around. He does not drink. He never had an overabundance of sexual desire and since falling on his pelvis off of a broken ladder some 3 or 4 years ago he has none. To charge him with immorality is preposterous. He is kind and gentle. But he is brave. In the big strike in Pensacola he fought his way through the picket lines and personally operated the switching locomotive with a shotgun at his elbow:— he was Shop Superintendent there.

He has always liked children, the smaller the better. He always has dimes for them and they all like him. He supports our daughter-in-law and our grandchildren. We are sweethearts, and in 38 years we hardly had a cross word. If my husband were immoral I would know it. He is a good manager and we have always done well. He is the most moral and gentlemanly man I know, and the kindest and the most generous. He thinks every woman is a lady, and he treats them as such.

Surely you will not permit a nobody to destroy him out of pure revenge. Do please be very thorough in your investigation and I know my husband will come out all right.

Yours respectfully,

/s/ Ione M. Money
(Mrs. Fred B. Money)

• • • •

12 Filed Apr 3 1952 Harry M. Hull, Clerk

Exhibit "F"

UNITED STATES NAVY YARD
Philadelphia, Pa.

31 January 1944

To: Mr. Fred B. Money, Master Mechanic, Heat Treating and Forge Shop.

Via: Manager, Industrial Department.

Subj: Disciplinary Action.

1. Charges of immoral or notoriously disgraceful conduct are hereby preferred against you, the nature of which is as follows:

(a) That during the month of March 1943, at a birthday party given in your honor in Shop 23 by the women employees of your shop, you did kiss these women employees present and made further advances to at least two of them, which actions on your part were resented by these employees.

(b) That in or near National Park, N. J., over a period of years, you have had abnormal sexual relations with, and have made advances to, girls in their teens; that these occurrences continued as recently as eight or nine months ago.

2. Due to the charges as indicated above, you are hereby suspended from duty without pay pending action in your case. You are hereby given 3 days from the date hereof to make any reply in writing which you consider appropriate to the charges, and to show cause why you should not be discharged.

M. F. Draemel
Commandant

• • • •

13 Filed Apr 3 1952 Harry M. Hull, Clerk

Exhibit "G"

, C. E.
National Park, New Jersey
P. O. Box 132
Phone Woodbury 1831-R-1-1
4 February, 1944

To:—M. F. Draemel, Rear Admiral, U.S.N.,
Commandant, Philadelphia Navy Yard.

Subject:—Proposed Disciplinary Action:—Reply to
charges.

1. On Feb. 1st 1944 I was called before the Commandant and shown charges against me as set forth in letter dated 31 Jan. 1944. I was told that I would be permitted to resign if I chose to do so. I declined to so resign, and was given until 4 Feb. to make written reply to said charges. I beg to submit and file the following answer.

2. Charge (a). It is submitted that a surprise birthday party was given in my honor in the shop store-room during a luncheon period in March 1943 by women employees of my shop. On this occasion a birthday cake was presented to me and I was escorted to the center of the room and to the end of a table under a sign which I afterwards noticed had the words "Lots of Luck and Kisses". The women then crowded around me and showered me with kisses. I was much embarrassed by the situation, but tried to accept it in good faith. Similar incidents have often taken place throughout the Navy Yard at Christmas. I absolutely deny that any improper advances were made by me to any woman participating, nor was any resentment showed by anyone. The entire

affair appeared to be a happy occasion among all present. I had no knowledge whatsoever of the planning of this affair until I entered the room where it was held. I accepted the spirit of the occasion as a mark of goodwill on the part of women employees intended to demonstrate a cooperative attitude in their work.

If the Commandant should consider my acceptance of these attentions at that time as a breach of discipline, then and in that event I desire to express my deep regret for an error in judgment on my part.

3. Charge (b). The charge in this paragraph concerns matters outside of my duties at the Navy Yard and in no way concerning my work.

I totally deny the allegations concerning any alleged improper acts or relations at any time or with any person whatsoever at or near National Park, N.J., or at any other place.

I have heard with great concern that two persons declaring themselves officials of the United States Government have been seeking affidavits at or near National Park in order that charges might be filed against me at the Navy Yard. It is reported to me that they have obtained affidavits from minors, without the previous knowledge of the families of those minors, and without the said minors having a proper knowledge of the seriousness and of the legal implications of their affidavits.

Attached hereto and made a part of this reply is the affidavit of Mrs. Ruth Williams, a minor, relating to circumstances under which an Affidavit supposedly used against me was obtained. The second affidavit of Harold Williams, her husband, is in corroboration of certain facts in connection therewith.

These affidavits show that the affidavit obtained and supposedly used against me and upon which or partly

upon which a charge in this matter was based, was obtained by fraud and duress, from a minor, without the proper protection of her legal rights and without her knowledge of what she was doing. It is believed that other affidavit or affidavits were obtained under similar circumstances.

In view of the serious nature of this charge these affidavits should be disregarded and not considered in connection with any charges made against me as an employee of the Philadelphia Navy Yard.

4. I hereby request copies of affidavits upon which charges are made against me, as provided by the Act of Aug. 24, 1912.

14 5. Owing to my efforts as Master Mechanic Forge Shop to secure full measure of work from employees to meet heavy war schedules, I have by some people been regarded as a too-strict disciplinarian. Certain employees of my department have on that account become my enemies. Such animosity against me as has been thus engendered has resulted in the filing of the above charges to justify the shortcomings of those persons. If these actions of such persons and others with alleged grievances be thus encouraged by superior officers, then the functioning of disciplinary action in the Navy Yard will be adversely affected in serious degree.

6. My ability as a mechanic and as an executive has, within my knowledge, always been pronounced excellent. I maintain that my character throughout my lifetime has also been excellent:—and that my reputation among all sound citizens has throughout my lifetime been excellent, likewise.

/s/ Fred B. Money
Fred B. Money
Feb. 2, 1944

15 STATE OF PENNA.)
COUNTY OF PHILADELPHIA) ss.

RUTH WILLIAMS, being duly sworn according to law, deposes and says she is the wife of Harold E. Williams, residing at 12 E. Barber Ave., Woodbury, N. J., and that she is 18 years of age;—she has been married 3 years and that she has known Mr. & Mrs. Fred B. Money for about 7 years. They both lived in the same town.

My husband and Mr. Money have been friends for the last 4 or 5 years. About 3 weeks ago 2 men came to our house in a coupe while my husband was working and asked me if I knew Mabel Dolby, and I said "Yes". They asked me to come over to the Prosecutor's Office. They led me to believe that they wanted me to help get her discharged from Little Falls Training School, Little Falls, N. J., where she had been committed as a delinquent. I then went in their coupe and was driven over to the Prosecutor's Office. They then brought me inside to a room and asked me questions concerning her and also asked if I knew Mr. Money. I said, Yes. As I recall it, one of the men wrote the answers down on paper. They asked me if I ever went out at night with Mr. Money, and I said yes, I did. Sometimes he would take me to a diner, but there was always some one else along. Sometimes he would take me to an auction. He had known my family as well as myself for 7 years and we were all on friendly relations. They asked me if I ever had any sexual relations with Mr. Money and I said, No. Then they said to me "You know you did, and we know you did". Then they said "Didn't you mean to say Yes?" They had me confused and I said Yes. I did not understand at all what they were trying to do. Then, as I recall it, they asked me if he ever touched me in any way and I replied Yes. Then they said "Did he touch you with his hands on your breast" and I said Yes. This

fact is not true because he never at any time did this. I only said Yes because they wanted me to say Yes to all of their questions.

As I recall it they then had this statement typewritten and asked me to sign it. They called for Mrs. Kennedy who is a Notary Public, who put her seal on the paper. I did not read over the paper carefully and did not understand what they had in it. I did not have my eye glasses and cannot see without them.

On the following week the same two men again called at my home, in the same coupe, and asked me to come over again to the Prosecutor's Office. I went over with them and then they started to ask me questions again, one man would write down the answers on the paper and another man would afterwards typewrite them. They asked me similar questions concerning Mr. Money which they did before and stated they wanted me to give the same answers. I then gave the same answers that they wanted me to give as near as possible as I could remember them. They told me to say Yes to every question and I answered the way they wanted me to do. I was frightened and did not know what they wanted to do, but I thought I had better do what they requested. Then the typewritten statement was given to me and I was asked to read it. I glanced over it but did not know whether it was the same that I said before or not. They asked me to sign at the bottom of each page, which I did. They had Mrs. Kennedy, the Notary Public, to come in and she put her seal on the paper. They then warned me not to tell my husband, my mother or father, or Mr. Money, or any other person whatsoever;—that if I did tell any of them that I would be brought into Court. This had me frightened. I then went home and told my husband all about it. He asked me why I did it and I said I was frightened. I also told my husband the first time and he instructed me not to go out again with these

men or give any information. I went with them however the second time because I was afraid and did not know what to do, as I was alone in the house on both times and did not have anyone to ask or to advise me.

I want to say that Mr. Money at no time ever acted improperly with me and never at any time had any improper relations with me;—that any statement that I gave to the contrary to these two men was untrue and in this respect was obtained from me by fear. I explained all this to my husband and he stated that I must tell the truth so as to take this reflection and charge off Mr. Money.

16 For this reason I make this affidavit in the presence of my husband so that he will know that I repudiate the former statements which have been obtained from me by these two men. I do not know who they are. I do know, however, that they were not in uniform and they had a Pennsylvania tag on their automobile.

And further deponent sayeth not.

(Signed) Mrs. Ruth Williams

Sworn & subscribed before me this 2nd day of Feb. A. D. 1944.

Anna M. Keobar,

Notary Public

My Commission Exp. Mar. 9, 1947.

17 Filed Apr 3 1952 Harry M. Hull, Clerk

STATE OF PENNA.,)
COUNTY OF PHILADELPHIA) ss.

Harold E. Williams, being duly sworn according to the law, deposes and says that he resides at 12 East Barber Ave., Woodbury, N. J., and am 33 years of age. I have been married to my wife three years March 1944. We have no children. My wife is now 18 years of age.

My wife told me about 3 weeks ago of the visit of 2 men to our house who called upon her while I was at work and then induced her to go in their coupe and drive over to the Prosecutor's Office, Woodbury, N. J. She told me that they brought her over to help get Mabel Dolby out of Little Falls Training School, but when she got over there they asked more questions about Mr. Money and herself than they did about Mabel Dolby. She told me that she was there for about an hour and she was warned not to tell me. When I returned from work that evening she told me the entire story. She also told me that they made her say some things against Mr. Money which were not true. I told her that she should not have done that and hoped that nothing would come of it, and if these men ever came back again not to answer any questions and refer them to me. Notwithstanding this fact I learned, however, the following week they called again and induced her to go in their coupe and drive again to the Prosecutor's Office. She told me the various questions which they asked me. She said they asked her if Mr. Money had any improper relations with her and described the different methods. She stated that they had her frightened the first time and she tried to remember what she said the first time and she repeated the answers as near as she could remember. She told me that she never had any improper relations and the statements which they tried to get her to make were untrue and she did not know why they should bring her name into this matter.

I have known Mr. Money for 4 or 5 years and would see him almost every day. He was on friendly relations with myself and other neighbors. I have not seen him so much recently. I have always had the greatest respect for him and never heard of any improper act or misconduct on his part with anyone. The charges which are sought to involve my wife I believe to be untrue and

thoroughly believe that the statements obtained from her were forced by fear and I do not believe that she knew what she was saying, if she stated that Mr. Money committed any improper act with her in any form.

And further deponent sayeth not.

(Signed) Harold E. Williams

Sworn and Subscribed before me this 2nd day of February A. D. 1944.

Anna M. Keobar
Notary Public
My Comm. Exp. Mar. 9, 1947

18

Exhibit "H"

UNITED STATES NAVY DEPARTMENT

(Variation of Standard Form 50)

Office: of Assistant Secretary of the Navy
9. Report No.

1. Name Fred B. Money

Via: Commandant, Navy Yard, Philadelphia, Pa.

Date: 18 April 1944

This is to notify you of the following action concerning your employment.

2. Nature of action Removal

3. Effective date At the expiration of all accrued annual leave due you.

10. Civil Service or other legal authority Act of 8-24-12

CSC Form 2009

CSC Rule XII (2-1-33 par. 90).

From— To—

11. Appropriation

4. Position Master Mechanic (Forge Shop)
From: To:
5. Grade and salary Group I Va, \$18.40 per diem
6. Bureau or other unit Industrial Department (Production Division), Navy Yard
7. Headquarters Philadelphia, Pa.
8. Departmental or field Field Field
12. Date of Birth March 22, 1885
13. Specific vacancy
14. J. C. S. No.
15. St. Form 61 executed _____date

The Secretary of the Navy has examined the charges preferred against you by the Commandant of the Navy Yard, Philadelphia, in letter of 31 January 1944, your answer thereto in letter of 4 February 1944, and the written statements of certain persons in your behalf.

After careful consideration the Secretary of the Navy has concluded that your usefulness as Master Mechanic in the Philadelphia Navy Yard has ceased to exist.

Accordingly, your discharge is hereby effected to promote the efficiency of the service.

This action is subject to the provisions on the reverse hereof, if applicable.

Signature Ralph A. Bard

The Assistant Secretary of the Navy

CC: Ships

Nyd, Phila., Pa.

• • • •

19 Filed Jun 11 1952 Harry M. Hull, Clerk

Answer

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

Answering specifically the numbered paragraphs of the complaint defendant avers:

1. The allegations contained in paragraph 1 of the complaint state conclusions of law which the defendant is not required to answer.

2, 3, 4, 5. Admitted.

6. The allegations contained in paragraph 6 of the complaint are admitted except that defendant denies that plaintiff was not given any explanation about his alleged improper conduct. Defendant alleges that plaintiff was given all information necessary for the preparation of plaintiff's defense to the charges preferred against him.

7. Denied.

8. The allegations contained in paragraph 8 of the complaint are admitted except that defendant again denies that plaintiff was not supplied with all information necessary for the preparation of his defense to the charges preferred against him.

20 9. Admitted.

10. Defendant admits that plaintiff replied in writing to the charges preferred against him on February 4, 1944. Defendant further admits that in his reply plaintiff denied the misconduct with which he was charged. Defendant further admits that thereafter plaintiff submitted a number of additional statements and affidavits supporting his defense. Lastly, defendant admits that by letter of April 18, 1944, plaintiff was notified of his discharge as a result of the charges preferred against him, and that plaintiff's dismissal was approved by the Secretary of the Navy. The remaining allegations of paragraph 10 of the complaint are denied.

11. Insofar as the allegations contained in paragraph 11 of the complaint state conclusions of law, the defendant is not required to answer them. Insofar as those allegations state facts, they are denied.

12. Defendant denies that plaintiff has not been furnished a clear statement of the charges preferred against him. Defendant further denies that plaintiff has been denied access to any files or information necessary to the preparation of his defense. Defendant has insufficient information upon which to form a belief as to the remaining allegations of paragraph 12 of the complaint.

Third Defense

Plaintiff was discharged after adequate notice and opportunity for hearing in conformity with all applicable Civil Service regulations.

WHEREFORE, having fully answered, defendant demands judgment plus the costs of this suit.

/s/ Charles M. Irelan
CHARLES M. IRELAN
United States Attorney

* * * *

22 Filed Aug 25 1952 Harry M. Hull, Clerk

Motion for Summary Judgment

Comes now the plaintiff in the above-entitled case and moves for Summary Judgment on the pleadings and exhibits attached to them, and upon the affidavit and accompanying exhibits attached hereto.

There is no genuine issue of fact in the case, and upon the undisputed facts judgment should be entered for the plaintiff.

/s/ Keith L. Seegmiller
Keith L. Seegmiller
Attorney for Plaintiff

* * *

23 Filed Aug 25 1952 Harry M. Hull, Clerk

Affidavit of Fred B. Money

* * *

State of New Jersey)
 County of Gloucester) ss.

I, Fred B. Money, being first duly sworn, depose and say that I am the plaintiff in the case of *Fred B. Money v. Dan A. Kimball*, identified in the attached Motion for Summary Judgment, and that this affidavit is given to provide facts in support of that motion, in addition to the facts stated in the Complaint in said case, all of which are hereby re-affirmed.

About the month of March 1943, while I was employed as "The Master Mechanic, Forge Shop" at the U. S. Naval Ship Yard in Philadelphia, Pennsylvania, one Lt. Spencer Liverant (then known to me as Lt. Spencer) of the Naval Intelligence Department, asked me to sign complaints against Oliver Wuetig and Joseph Mazia, Federal Civil Service employees. I declined to sign the complaints because I had no knowledge that the charges against these men were true. Conversation between us at that time developed vigorous conflict and hot words between us. He was indignant that I would not sign a complaint regardless of whether I knew the facts, since he assured me that the matter would be entirely secret and confidential. I was indignant that he would ask me to sign a complaint without knowledge of the facts asserted in it and I later reported the incident to the Office of Naval Intelligence, and recommended that he be stripped of his rank of Lieutenant.

I am informed and believe and therefore assert that said Lt. Spencer Liverant about the middle of January

1944, obtained a statement from Mrs. Ruth Williams to the effect that I had made improper advances to her and about the same time Liverant made complaint of such advances to the Assistant Attorney General for Gloucester County, N. J., the place of my residence, seeking criminal action against me. Exhibit 1, attached hereto and made part hereof, is a true and correct copy of a letter from said Assistant Attorney General to my attorney, and a copy of a letter written by me to the Assistant Attorney General. No criminal action against me resulted.

During November and December 1943 and early January 1944 I received advice from many sources that
24 I was being investigated by Naval Intelligence. It was clearly indicated that the investigation was being made by Lt. Spencer Liverant. On January 24, 1944 I addressed a letter to Naval Intelligence concerning such investigation, and delivered it personally to Lt. Mooney, a Naval Intelligence Officer. I told Lt. Mooney orally that I thought Lt. Liverant was making the investigation. I made reference to my earlier complaint against him and stated my belief that the present investigation was purely a matter of retaliation. Lt. Mooney then asked indignantly "You have the effrontery to question the integrity of Naval Intelligence?" He then concluded, "Buddy, you're finished."

During the luncheon period, about noon, on the following day, the said Lt. Spencer Liverant came out to the shop where I was eating my lunch and handed me a sealed envelope. I did not open it immediately although he waited. After a short pause he said "Well, open it and see how you like them apples." I opened the envelope and found that it contained the letter of January 25, 1944 attached the Complaint as Exhibit A. Pursuant to the order contained in that letter I accompanied Mr.

A. J. Chantry to the Office of the Commandant, M. F. Draemel, at 2:00 o'clock p.m. that afternoon.

The Commandant advised me that he was going to prefer charges against me in four words, without any further explanation of the charges; that I would not be allowed to ask any questions; that I would be furnished no further information; that I would merely reply "guilty" or "not guilty" and that would be the extent of the interview. He then said "The charge is 'improper relations with women' ". I answered "not guilty" and he said "You are hereby suspended until further notice." I requested but he emphatically refused to give me a written copy of the charges, or any further information whatever about them.

That ended the conference and I left the office. Standing immediately outside the door of the office of the Commandant were Captain Seiler and Lt. Commander Watson, whose offices and the places where they would normally be found were 1/8 mile and 1/4 mile away, respectively. They required me to walk between them and in that manner they escorted me to my office at the Forge Shop, about 1/2 mile distant. There we found Mr. Ed. G. Collar, Master Shipfitter. Seiler, Watson and Collar stepped into the next room in the presence of secretarial and other staff personnel theretofore under my supervision and announced that I had been relieved of duty; that Collar would take over in my place, and that Daniel Machon would be in charge of the shop.

25 Captain Seiler then lead me to a side door where there stood a station wagon with a woman Navy chauffeur and a male Marine. I was ordered to get into the station wagon, and accompanied by Captain Seiler and the Marine, was driven to the gate of the Navy Yard where, pursuant to orders given me, I got out of the car and delivered my badge to Captain Seiler.

I immediately employed an attorney (Michael Francis Doyle) who notified the Commandant that he had illegally refused to give me charges in writing with sufficient detail to make defense possible. Thereafter written charges against me (Exhibit F to the Complaint) were delivered to me by the Commandant personally in his office on February 1, 1944. On that occasion, but before he delivered the written charges to me, the Commandant told me that the matter had then gone so far that there could be no question of backtracking. He said the knowledge of the charges had been widely disseminated which had destroyed my usefulness to the service, whether they were true or not. He thereupon said that I would be given the opportunity to resign in good standing and stated his strong recommendation that I do so since, he explained, under those circumstances there would be no obstacle to my obtaining employment in some other agency with all retirement and other Civil Service privileges unimpaired. He continued that if I refused to resign he had no alternative but to sign the charges lying on the desk before him and deliver them to me. He said his safe was bursting with accusations against me, many of them charging criminal conduct on my part, which he could use against me without need, under Civil Service rules, of substantiation. He said that he had selected certain of these charges, stated in the paper lying on his desk and which I had not as yet seen, which, if formally lodged against me, could not fail of devastating effect upon my career, whether they were true or false. He closed this line of explanatory statements by telling me that if I should resign voluntarily he would destroy the written charges against me and all other papers of accusation against me which he had.

I told the Commandant that I would not resign. Thereupon he promptly signed the charges and delivered them to me (Exhibit F to Complaint.) He then stated that I

would be given no further information and that I would have three days within which to answer in writing.

26 Promptly thereafter I made wide inquiry among my friends and acquaintances to ascertain the source of these charges, and more details concerning them in order that I might disprove them. Within the three day period allowed me, on February 4, 1944, I made answer in writing submitting proof thought possibly to be pertinent, but without knowing whether it in fact even dealt with the same subject matter as that underlying the charges against me. (Exhibit G to Complaint) During the ensuing weeks I submitted numerous affidavits to the Commandant in support of my general character and integrity, but for lack of detailed knowledge of the charges against me I was not able to make specific refutation. Among the general statements submitted in my favor was a communication from the Association of Master Mechanics and Foremen, of which I then was a member (and an officer) in good standing. Said membership automatically ceased upon termination of my Government service. Exhibit 2, attached and made part hereof, is a true and correct copy of the last named communication. Circulation of a petition among shop employees to register a vote of confidence in my ability and good character was denied. (Exhibit 4 attached hereto and made part hereof)

On February 21, 1944 I had a brief conversation with Rear Admiral Allan J. Chantry and immediately made a written record of it. Exhibit 4, attached, is a record made at that time and contains a true and accurate statement of said conversation.

Official identity of the person making the charges against me "as a fellow employee" first came to my attention soon after February 14, 1945, when I was shown a letter from M. F. Draemel to Congressman Charles A.

Wolverton, a true copy of which is attached and made part hereof as Exhibit 3.

At the time of my suspension from service on January 25, 1944 I was not permitted to take any of my personal belongings with me and I have not, to the present date, obtained some of the personal property then left, including property of great value such as a manuscript of a book I had ready for publication on The Science and Art of Forging, and preliminary papers on four inventions. Among said property left and never recovered was a day-by-day diary of reports that had been coming to me over many weeks prior to January 25, 1944 of investigations of me. Said diary contained information that would have facilitated my defense of the charges against me, had I been permitted timely access to it.

27 Through long and diligent investigation, aided by detective agencies employed by me, I ultimately found, after I had been discharged from service at the Navy Yard, the names of four persons who had signed and submitted to the Commandant false charges against me of immoral conduct, which were responsible, in part at least, for my discharge. These people were Paul A. Etter, Martin R. Dolan, Helen Dolan and L. S. Henley.

I brought suit against the three first named of these people for conspiracy, slander and libel, based on the statements they had made against me to the Commandant, and received judgment against them in the total amount of \$5,300, plus costs, which included \$5,000 as punitive damages. It was shown at the trial that said statements which they had made against me were the cause, at least in part, of my discharge from service at the Navy Yard. Said suit is officially identified as *Fred B. Money v. Paul A. Etter, Martin R. Dolan and Helen M. Dolan*, in the Superior Court of New Jersey, Law Division, Gloucester County (Docket No. 2-531-49—141715). Suit

was brought against L. S. Henley solely for the reason that he sold his property in New Jersey and left that jurisdiction before he could be served with process, and died outside the State of New Jersey before the case against the other three was brought to trial.

To the date hereof I have never learned definitely whether others also filed charges against me that contributed to the action of the Navy Department in removing me from service, and I have no knowledge, except as recited herein, of the details of the charges contained in the letter of January 31, 1944 (Exhibit F to the Complaint). Lt. Liverant left the vicinity of Philadelphia, making suit against him difficult, and by reason of his being known sometimes as Lt. Spencer and sometimes as Lt. Liverant, identifying him and his record clearly has not been possible, despite my best efforts to that end.

/s/ Fred B. Money
Fred B. Money

Subscribed and sworn to before me this 29th day of March, 1952.

/s/ James H. Jones
Notary Public

My Commission Expires March 26, 1957

• • • •

28 Filed Aug 25 1952 Harry M. Hull, Clerk

Exhibit 1

COUNTY OF GLOUCESTER

Office of the
Prosecutor of the Pleas
Woodbury, N. J.

February 18, 1944.

Isadore H. Hermann, Esq.,
300 Broadway,
Camden, New Jersey.

Dear Mr. Hermann:

In Re: State vs. Fred B. Mooney.

In the above matter our office received a request to investigate the character and conduct of the above accused. In strict confidence, he was suspended of carnal misconduct with minor females of tender years which, of course, would be a very serious charge at any time.

I am not at liberty to disclose to you any further facts concerning our investigation, but I can say that the matter is now closed and so long as the above name remains out of this County he may consider the case concluded.

With kind personal regards, I am

Very truly yours,

/s/ Charles Camp Cotton
Assistant Attorney General.

CCC/SP

Redbank & Hessian Aves.,
Thorofare, N. J.
March 1st, 1944

Camp Cotton
County Prosecutor
Woodbury, N. J.

Sir:

In confirmation of street conversation relative to your letter of Feb. 18th 1944 to my attorney Hermann in which letter you in effect threaten me with prosecution on serious criminal charges UNLESS I leave and/or remain out of Gloucester County.

I hereby serve you with written notice that I have no intention whatsoever of leaving or remaining out of Gloucester County. I may be found at my home, at the above address.

I remind you that it is your *express duty* to prosecute me if I am indeed a criminal.

Very earnestly,

/s/ Fred B. Money

29

Exhibit 2

Filed Aug 25, 1952 Harry M. Hull, Clerk

ASSOCIATION OF MASTER MECHANICS
AND FOREMEN
of the Philadelphia Navy Yard
Navy Yard, Philadelphia, Pa.

5 January 1944

From: Association of Master Mechanics and Foremen.

To: Commandant, M. F. Draemel, Rear Admiral, U.S.N.

Via: Manager, A. J. Chantry, Rear Admiral, U.S.N.

Subject: Fred Money, Master Shipsmith—Charges.

1. In connection with the subject matter, we are appealing to you because we have the personal interest of one of our members at heart, and because we feel that each and every one of us and our organization of Master Mechanics and Foremen are indirectly concerned.

2. Mr. Money was investigated and duly elected to membership in the Association, and we have been closely associated with him during his employment in the Yard. We heartily endorse and have a sincere belief in his honesty, integrity and moral character.

3. Regarding our interest, we feel naturally that each and every Master and Foreman in the Yard is constantly and continually "on the Spot" for his conduct and actions. We also feel that every one of us is entitled to adequate protection from malicious charges which might be unfounded and untrue and, coming from a subordinate or subordinates, could cause considerable reduction of shop morale and a commensurate lowering of our effectiveness and efficiency in properly supervising of our various shop forces.

4. This appeal is presented not as a criticism of the present action inasmuch as we are not cognizant of all the details and facts of the case, but rather as a request for assurance that the dignity of the positions we hold will be maintained at the highest of standards at all times.

/s/ E. F. Stutzke .
President

EFS:JJD

Exhibit 3

P14-3(5)-LC

UNITED STATES NAVY YARD

Philadelphia 12, Pa.

14 February 1945

Hon. Charles A. Wolverton, M. C.
House of Representatives
Washington, D. C.

Dear Congressman Wolverton:

In reply to your letter of February 13 regarding Fred B. Money, a brief statement of the case is as follows:

30 (a) Fred B. Money was employed in the Yard as Foreman of the Foundry. His technical knowledge and skill was considered excellent.

(b) A fellow employee made charges involving Mr. Money's moral character. These charges were of such a nature that if not substantiated the employee was subject to disciplinary action. On the other hand, if substantiated it was evident Mr. Money was not suitable for employment in the Yard, especially in a supervisory capacity.

(c) The charges were substantiated by an investigation conducted at the direction of the Commandant.

(d) Mr. Money's statement that he had not been given an opportunity to answer the charges is not correct. He was given that opportunity and merely denied the charges.

(e) Mr. Money's case was forwarded to the Navy Department with the recommendation that he be dismissed. Mr. Money employed an attorney, Mr. Michael Francis Doyle, to represent his interest. Mr. Doyle con-

ferred with the Commandant and when informed presented Mr. Money's case to the Navy Department.

(f) After thorough consideration, the Navy Department directed that Mr. Money be dismissed.

Since his dismissal Mr. Money has made repeated efforts to have the charges of dismissal removed. He apparently made claims with statements similar to the statements made to you to the Civil Service Commission and to various federal organizations. As a result of such claims, officials of these organizations have called on the Commandant where the case was briefly explained, which explanation has apparently been to their satisfaction.

The question of disciplinary action against one of the leading civilian supervisors of the Yard is in itself a serious matter. The loss of Mr. Money's technical knowledge to such an organization at a time when the country is at war, was also a serious consideration. In spite of the above, the circumstances were such that no other course of action than that taken was possible.

I trust this resume gives you the information you require.

Sincerely yours,

/s/ M. F. Draemel

M. F. Draemel

Rear Admiral, U. S. Navy
Commandant

Exhibit 4

Feb. 8th, 1944.

From: Shop Committee and War Production Committee
of Forge (23) Shop.

To: Commandant

Via: Official Channels.

Subject: Proposed Petition

We request permission to solicit in the forge shop the following petition,

31 We employees of the Forge Shop wish to express our vote of confidence in the ability and good character of Master Mechanic Mr. Fred B. Money.

/s/ John M. Murphy Shop Committee
 /s/ William J. Terry Shop Committee. 23130
 /s/ Eugene Bigham Shop Committee. Alt. 23148
 /s/ Reginald C. Walker Shop Committee. Alt. 23581
 /s/ John C. Bennett 23115 War Production Committee.
 /s/ Howard W. Cook 23142 War Production Committee.
 /s/ Charles S. Neville War Production Committee.
 23062
 /s/ Boyd H. Kepler War Production Committee.
 /s/ Peter Clack War Production Committee. 23147

P8-5/-CC

17 February 1944

End-2 on ltr. from Shop Committee and War Production Committee of Forge (23) Shop, dtd. 8 Feb. 1944, with Master Shipfitter's forwarding memo. of 12 Feb. 1944.

To: Mgr. Ind.

Subj: Permission to solicit petition re Good Character of Master Mechanic (Forge Shop).

1. In view of the fact that Mr. Money is now under charges, the Commandant considers that the general circulation of a petition would be inappropriate at the present time.

2. The Commandant appreciates the combined Shop and War Production Committees' expression of confidence in Mr. Money and accepts this expression of confidence in lieu of the petition.

/s/ M. F. Draemel
 Comdt., NYPhil.

P-8-5 (P-1)

End-3

To: Shop Committee and War Production Committee of
Forge (23) Shop.

Via: Master Shipfitter.

1. Forwarded, inviting attention to End-2.

/s/ A. J. Chantry

Mgr., Ind. Dept.

(In ink) E. Y. C.

2.22/44

Delivered by Machon (?)

Exhibit 5

Spot Memorandum

About 2 P.M. today, February 21st, 1944 at the southerly terminal of the Route "C" Bus line I met Rear Admiral Allan J. Chantry (Industrial Manager)
32 and the following conversation ensued:

Admiral Chantry: "What are you doing?"

Money: "I am on my way to see Mr. Joy and Mr. Searles."

Admiral: "No;—I mean what are you doing about your case?"

Money: "I am fortified by innocence of any misconduct whatever, and have entered a documented defense indicating discovery of criminal subornation of secret perjury calculated to falsely fabricate secret so-called 'evidence' against me;—and in the opinion of my attorney my defense 'is complete and perfect, and will clear me in any Court in the land.' "

Admiral: "You know that Admiral Draemel has forwarded to Washington his recommendation for your discharge."

Money: "I doubt whether the Navy Department will approve of the discharge of an innocent man."

Admiral: "Admiral Draemel is adamant that you be discharged forthwith, without a hearing. Any attempt to defend yourself is useless. Whether guilty or innocent is beside the point, for of course you must realize that even though your defense might be perfect and though you might prove yourself innocent, the very nature of the charges, whether true or false, is such that your usefulness to *the service is now considered to be destroyed. SORRY!*"

/s/ Fred B. Money
2:35 P.M., February 21st, 1944

• • • •

33 Filed Sep 19 1952 Harry M. Hull, Clerk

Motion for Summary Judgment

Comes now the defendant by his attorney, the United States Attorney, and moves for summary judgment in behalf of the defendant on the ground that there is no genuine issue of material fact and the defendant is entitled to judgment as a matter of law.

/s/ Charles M. Ireland
CHARLES M. IRELAND
United States Attorney

• • • •

34 Filed Nov 3 1952 Harry M. Hull, Clerk
Second Affidavit of Fred B. Money

State of New Jersey)
County of Gloucester) ss.

I, Fred B. Money, being first duly sworn, depose and say that I am the plaintiff in the above-entitled case; that I have heretofore submitted an affidavit in said case and

that I submit herewith an additional affidavit setting forth facts concerning my attempts to have my removal from my position in the Department of the Navy effective January 25, 1944 set aside, and to obtain restoration to said position.

Action leading to my removal from my position first came to my attention on January 25, 1944. (Exhibit A to Complaint) Approval of the action removing me from my position was given by the Secretary of the Navy on April 14, 1944. (Exhibit H to Complaint) On June 5, 1944 I wrote to the United States Civil Service Commission requesting review of the action of the Department in removing me from office. In a letter dated June 19, 1944 the Regional Director of the United States Civil Service Commission advised me:

"It will be seen, therefore, that the Commandant in effecting your removal apparently complied with the provisions of Section 1 of Civil Service Rule XII insofar as giving you official notice, together with reasons for your discharge and according you the opportunity to reply to the same is concerned. Unless, as indicated above, you, therefore, desire to charge that removal was made for political or religious reasons, with offer of proof of such a charge, there would be no action possible by the Commission in connection with your appeal from discharge."

I thereupon endeavored to ascertain the exact reasons underlying the charges against me to establish whether they were "political or religious" as stated in the letter of the Civil Service Commission, or to establish other reasons which could be specifically disproved. As
35 stated in Paragraph 12 of the Complaint, continuously from January 25, 1944 to the time of filing suit in this Court, I endeavored, with some success as stated hereinafter, to obtain a clear and a

detailed statement of the facts underlying the charges against me. In this connection I employed private detectives at a cost to myself of several thousands of dollars for the purpose of ascertaining the exact nature of the charges against me, in order that I might refute them. Also, on March 4 and April 15, 1945 I sought further consideration of the Department's action against me by the United States Civil Service Commission, and in a letter from the Commission dated June 23, 1945, I was advised:

"Reference is made to your letters of April 15, 1945, March 4, 1945, and previous correspondence regarding your discharge from the Philadelphia Navy Yard on August 2, 1944.

Although consideration has been given to the information disclosed by your record, as well as that presented by you, the Commission is unable to take favorable action in your case under the provisions of Section 4 of the Civil Service Rule XII inasmuch as it is not believed that a prima facie case of injustice in your discharge from the Philadelphia Navy Yard has been established."

Despite this reply, however, I continued my efforts, as stated above, to obtain sufficient details concerning the charges against me to provide the foundation for refuting them. Among my many efforts in this respect I wrote to or personally visited the Navy Department requesting access to my files or reconsideration of my removal, as set forth below, and in each instance I made it clear that I was actively pursuing my claim that my removal was invalid and should be set aside.

August 6, 1945—I wrote a letter to Admiral Chantry at the Philadelphia Navy Yard, but I received no reply to that communication.

Admiral Denfield, requesting a reply to an earlier letter March 1, 1946—Senator Smith, on my behalf, wrote to

from me seeking the address of Lt. Spencer Liverant. A reply to this letter, dated March 6, 1946, advised that said Liverant never served as an officer in the Navy.

March 23, 1946—I personally called at the Department of the Navy, requesting further information underlying the charges against me. I was denied any information whatever, and was told that the case was closed.

March 31, 1946—I wrote a letter to Secretary of the Navy Forrestal, requesting a hearing by him regarding my removal from my position.

36 April 9, 1946—A letter was addressed to me from Admiral Crisp, advising that my case was closed.

April 18, 1946—Secretary Forrestal wrote a letter to Senator Smith advising him in part "The Department cannot comply with the request of Mr. Money's attorney for documentation of the case."

April 18, 1946—I wrote a letter to the Commandant of Philadelphia Navy Yard presenting new evidence uncovered by me, and asking reconsideration of the case.

April 30, 1946—The Commandant of the Navy Yard wrote a letter to me advising that his action would be the same on the basis of the new facts submitted.

Dec. 18, 1946—Congressman Wolverton wrote to the Commandant at the Navy Yard at Philadelphia requesting return of a letter concerning my case, forwarded by the Congressman on November 10, 1943.

Dec. 24, 1946—The Commandant of the Navy Yard at Philadelphia wrote to Congressman Wolverton advising that the requested letter was not a matter of record.

On March 17, 1947 I brought suit in the United States District Court for the Eastern District of Pennsylvania against the Commandant of the Philadelphia Navy Yard,

the Director of Civilian Personnel at the Navy Yard, and the Regional Director of the Civil Service Commission for the Philadelphia area. That suit sought in effect a declaration that my removal from my position was illegal and invalid, and an order that I be reinstated to it. Judgment of the District Court dismissing the action was affirmed upon appeal by the United States Court of Appeals for the Third Circuit. It was there held in an opinion handed down on January 10, 1951, that the Secretary of the Navy was an essential party, and that accordingly dismissal by the District Court was proper. 186 F. 2d. 411. The Supreme Court denied certiorari on May 21, 1951. (341 U.S. 935)

While litigation in the Federal Court was going on, as stated above, I had obtained, through the diligent efforts described in the foregoing paragraphs, some information as to the persons who had accused me of improper relations with women, and at least some of the details of their accusations, and upon the basis of that information I brought suit against said people for conspiracy, slander, libel, as stated on Page 5 of my
37 former affidavit filed herein. That suit was filed on August 7, 1945 and was terminated by final judgment in my favor on February 6, 1950.

Thereafter I brought suit in the United States District Court for the District of Columbia on August 25, 1951 against Francis P. Mathews, Secretary of the Department of the Navy, Civil Action No. 3027-51. The Complaint alleged that the "defendant is the Secretary of the Department of the Navy" and this allegation was admitted in the answer, filed on behalf of the defendant on September 25, 1951. The fact is, however, that said Francis P. Mathews had resigned as Secretary of the Navy, and on April 3, 1952 this suit was instituted against the present defendant, successor to Mr. Mathews as Secretary of the Department of the Navy. This suit is based upon

the same facts and seeks the same relief as the said suit against Mathews.

/s/ Fred B. Money
Fred B. Money

Subscribed and sworn to before me this 26th day of September, 1952.

/s/ James H. Jones
Notary Public

My Commission Expires March 26, 1957

* * * *

38 Filed Dec 19 1952 Harry M. Hull, Clerk

Memorandum

This matter comes before the Court on motion by both plaintiff and defendant for summary judgment. The sole issue presented in plaintiff's memorandum for summary judgment is whether the charges preferred against plaintiff were stated with sufficient specificity. The charges were:

(a) That during the month of March 1943, at a birthday party given in your honor in Shop 23 by the women employees of your shop, you did kiss these women employees present and made further advances to at least two of them, which actions on your part were resented by these employees.

(b) That in or near National Park, N. J., over a period of years, you have had abnormal sexual relations with, and have made advances to, girls in their teens; that these occurrences continued as recently as eight or nine months ago.

In view of the fact that the Court has concluded that the plaintiff's assertion of lack of specificity is not well founded, it is not necessary for the Court to consider

the additonal issue of laches which has been advanced by the defendant.

Plaintiff relies on *Deak v. Pace*, 88 U.S.App.D.C. 50, but the Court of Appeals carefully indicated in that case that it was confined to the facts there presented. The Court there said, "What may fit the statutory requirement for full information in the circumstances of
39 one case may be wholly irrelevant to the circumstances of other cases."

It would appear that Charge (a) clearly meets the requirement of specificity. With reference to Charge (b), while it is true that the charge could be set out in more detail, it nevertheless appears from plaintiff's answer to the charges that he was fully aware of the fundamental nature and character of the same. He completely denied the allegations and apparently attempted to destroy the veracity of certain individuals who had given affidavits concerning the charges.

This Court cannot inquire into the guilt or innocence of the plaintiff. The only issue before it is whether the procedural requirement of specific charges has been made. *Bailey v. Richardson*, 86 U.S.App.D.C. 248; *Levine v. Farley*, 70 U.S.App.D.C. 381.

The Court concludes that plaintiff was fully informed of charges against him and that the defendant is therefore entitled to summary judgment.

/s/ Luther W. Youngdahl
Judge

December 19, 1952

• • • •

40 Filed Dec 19 1952 Harry M. Hull, Clerk

Order

The above-entitled matter came on to be heard before the undersigned on a motion by plaintiff for summary judgment and a motion by defendant for summary judgment.

Upon the arguments of counsel, the authorities submitted on and all the files and proceedings herein, it is hereby

ORDERED that the motion by plaintiff for summary judgment be and the same is denied, and

IT IS FURTHER ORDERED that the motion by defendant for summary judgment be and the same is granted.

/s/ Luther W. Youngdahl
Judge

December 19, 1952

* * * *

41 Filed Jan 13 1953 Harry M. Hull, Clerk

Notice of Appeal

Notice is hereby given that the plaintiff in the above-entitled case appeals to the United States Circuit Court of Appeals for the District of Columbia Circuit from the final order entered in this case on December 19, 1952, denying plaintiff's Motion for Summary Judgment and granting defendant's Motion for Summary Judgment.

/s/ Keith L. Seegmiller
Keith L. Seegmiller
Attorney for Plaintiff

* * * *

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,698

FRED B. MONEY, APPELLANT

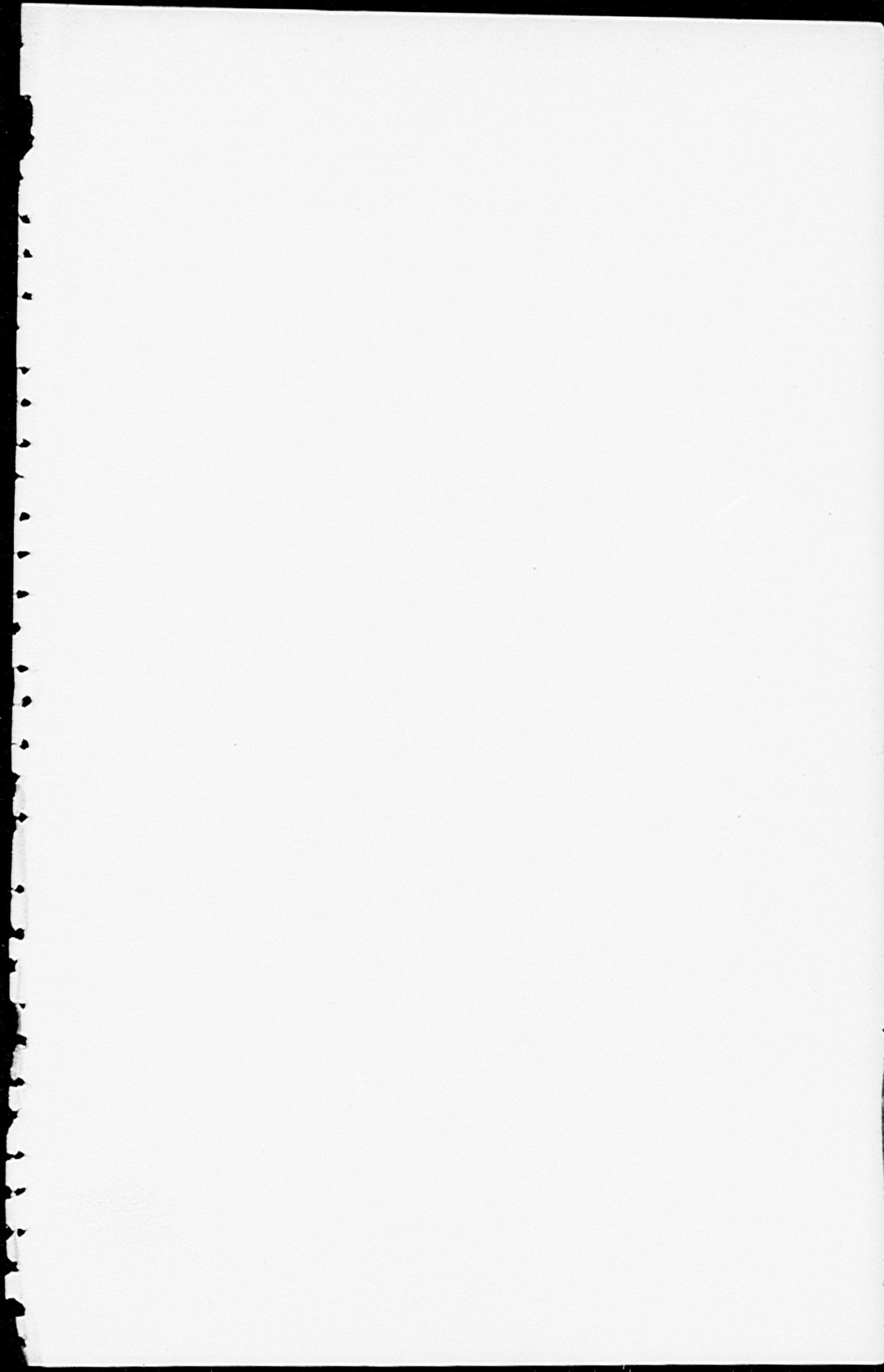
v.

ROBERT B. ANDERSON, SECRETARY, DEPARTMENT OF THE NAVY,
APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

CHARLES M. IRELAN,
United States Attorney.

ROBERT M. SCOTT,
WILLIAM R. GLENDON,
E. RILEY CASEY,
Assistant United States Attorneys.



No. 11,698

QUESTIONS PRESENTED

Whether the trial court erred in granting defendant's motion for summary judgment, it appearing to the court that the statute and regulations involved were complied with.

Whether under the facts in this case the appellant is barred by the doctrine of laches for having failed to pursue his proper remedy within the proper time period.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,698

FRED B. MONEY, APPELLANT

v.

ROBERT B. ANDERSON, SECRETARY, DEPARTMENT OF THE NAVY,
APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant obtained employment at the Philadelphia Navy Yard in 1932 as "Foreman Mechanic Forge Shop" (J.A. 2A) and remained in continuous employ until January 25, 1944, at which time he was "Master Mechanic Forge Shop". (J.A. 3A) His Civil Service classification at that time was Group IVa Supervisory. (J.A. 29A) On January 25, 1944, he was suspended by the Commandant of the Philadelphia Navy Yard, (J.A. 8A) and on February 1, 1944, was served with written charges relating to possible disciplinary action which embodied an oral presentation made to him on January 25. (J.A. 20A) On February 4, 1944, he made written answer to the charges, together with accompanying affidavits, (J.A. 21A) and on February 5, 1944, pursuant to applicable law, Navy Department regulations and Civil

Service regulations the Commandant recommended to the Secretary of the Navy that he be discharged. On April 18, 1944, Ralph A. Bard, Assistant Secretary of the Navy, signed an order of discharge (J.A. 28A) which was personally presented to appellant on the 28th day of April, 1944. Because of the accumulated leave privileges, his actual separation from the Government payroll occurred on August 2, 1944. Subsequently, on March 4 and April 15, 1945, appellant sought further consideration of his case by the Civil Service Commission and was advised by the Commission on June 23, 1945 (J.A. 48A):

Reference is made to your letters of April 15, 1945, March 4, 1945, and previous correspondence regarding your discharge from the Philadelphia Navy Yard on August 2, 1944.

Although consideration has been given to the information disclosed by your record, as well as that presented by you, the Commission is unable to take favorable action in your case under the provisions of Section 4 of the Civil Service Rule XII, inasmuch as it is not believed that a prima facie case of injustice in your discharge from the Philadelphia Navy Yard has been established.

In addition to the above the appellant also sought congressional intervention in his case as is shown by the letters written by Senator Smith (J.A. 48A) and Congressman Wolverton (J.A. 49A). In reply to a letter from the Congressman the Commandant of the Philadelphia Navy Yard stated (R. 29-30):

In reply to your letter of February 13 regarding Fred B. Money, a brief statement of the case is as follows: (a) Fred B. Money was employed in the yard as foreman of the foundry. His technical knowledge and skill was considered excellent.

(b) A fellow employee made charges involving Mr. Money's moral character. These charges were of such a nature that if not substantiated the employee was subject to disciplinary action. On the other hand, if substantiated it was evident Mr. Money was not suitable for employment in the yard, especially in a supervisory capacity.

(c) The charges were substantiated by an investigation conducted at the direction of the Commandant * * *.

(f) After thorough consideration the Navy Department directed that Mr. Money be dismissed * * *.

The question of disciplinary action against one of the leading supervisors of the yard is in itself a serious matter. The loss of Mr. Money's technical knowledge to such an organization at a time when the country is at war, was also a serious consideration. In spite of the above, circumstances were such that no other course of action than that taken was possible.

In March of 1947 appellant brought suit in the United States District Court for the Eastern District of Pennsylvania against the Commandant of the Philadelphia Navy Yard as well as others in an attempt to declare his removal invalid and to effect his reinstatement. (J.A. 49A)

The District Court in dismissing this action, stated that appellant's discharge was not in violation of the procedural requirements of the statute, and that the charge that was given in writing was with sufficient clarity and detail to appraise him of the fundamental basis of the charges. (88 F. Supp. 980). On appellant's petition for reargument and motion for a new trial, the District judge reaffirmed his previous decision and held in addition that dismissal of the complaint was dictated by the lack of an indispensable party. (89 F. Supp. 932). In the appeal that ensued from that case the United States Court of Appeals for the Third Circuit (186 F. 2d 411) upheld the dismissal of the complaint on the ground that the Secretary of the Navy was an essential party. Certiorari was denied by the Supreme Court (341 U.S. 935) (J.A. 50A)

In August of 1951 appellant brought suit in the United States District Court for the District of Columbia, this time against Francis P. Matthew, Secretary of the Department of the Navy, this suit was dismissed for failure to substitute the correct Secretary of Navy within the period allowed. (J.A. 50A) The present action was not instituted until April 3, 1952. (J.A. 2A)

Here, as in his previous case, the appellant ostensibly does not seek a judicial review of the reasons for his dismissal.

Rather, he alleges a violation of statutory rights in that he was not given a sufficient statement of the charges against him.

STATUTE INVOLVED

Section 652, Title 5, U.S. Code, as amended, provides:

No person in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing. Any person whose removal or suspension without pay is sought shall (1) have notice of the same and of any charges preferred against him; (2) be furnished with a copy of such charges; (3) be allowed a reasonable time for filing a written answer to such charges with affidavits; and (4) be furnished at the earliest practicable date with a written decision on such answer. No examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer or employee directing the removal or suspension without pay. Copies of the charges, the notice of hearing, the answer, the reasons for removal or suspension without pay, and the order of removal or suspension without pay shall be made a part of the records of the proper department or agency, as shall also the reasons for reduction in grade or compensation; and copies of the same shall be furnished, upon request, to the person affected and to the Civil Service Commission.

Regulations of the United States Civil Service Commission (Section 9.102, Federal Personnel Manual, Page Z-1-stated (R. 29-30):

No employee, veteran or nonveteran, shall be separated, suspended, or demoted except for such cause as will promote the efficiency of the service and for reasons given in writing. The agency shall notify the employee in writing of the action proposed to be taken. This notice shall set forth, specifically and in detail, the charges preferred against him. The employee shall be allowed a reasonable time for filing a written answer to such charges and furnishing affidavits in support of his answer. He shall not, however, be entitled to an examination of witnesses, nor shall any trial or hearing be required except in the discretion of the agency. If the

employee answers the charges, his answer must be considered by the agency. Following consideration of the answer, the employee shall be furnished at the earliest practical date with a written decision. If the agency determines that removal or other action is warranted, the employee shall be notified in the decision of the reasons for the action taken and its effective date. Copies of the charges, notice of hearing (if any), answer, reasons for removal, or other action, shall be made a part of the records of the department or agency concerned.

SUMMARY OF ARGUMENT

The appellant was given written charges sufficient to inform him of the fundamental nature and character of the charges against him. The procedures established by Congress for the removal of Civil Service personnel requires that the employee be furnished a copy of the charges against him. The Civil Service Commission by regulation requires that these charges shall be set forth, specifically and in detail. All of these requirements were fully complied with in appellant's case. In addition to the statutory requirements having been satisfied appellant has failed to effectively pursue his proper remedy for a period of eight years and is therefore barred by the doctrine of laches from attempting to assert it at this time.

ARGUMENT

The Charges Were Sufficiently Specific to Comply with the Requirements of the Statute

By statute the only required record of a discharge for cause from Federal Civil Service is a record of charges, notice of hearing, answer, reasons for removal and order of removal. 5 U.S.C. 652 (a). Those records are here. They are sufficient and amply supported by the record described above. The reasons for appellant's discharge are in the record and the District Court is without jurisdiction to go behind these reasons. *Bailey v. Richardson*, 86 U.S. App. D.C. 248, 182 F. 2d 46, affirmed by an equally divided Court 341 U.S. 918. Appellant, like any citizen of the United States, has no right to Government employment. Whatever

rights appellant has must come from the enactment of Congress. Congress has established procedures for the removal of Civil Service personnel. As long as these statutory procedures are complied with, the courts are without jurisdiction to review the determinations of the executive departments with respect to the dismissal of their employees. *Bailey v. Richardson, supra*; *Kein v. United States* (1900), 177 U.S. 290; *Carter v. Forrestal* (1949), 85 U.S. App. D.C. 53; *Freedman v. Schwellenbach* (1947), 81 U.S. App. D.C. 365, *cert. denied* 330 U.S. 839; *Hammond v. Hull* (1942), 76 U.S. App. D.C. 301; *Levine v. Farley* (1939), 70 App. D.C. 381, *cert. denied* 308 U.S. 622. As appellant's complaint fully demonstrates he (1) received notice, (2) was furnished a copy of the charges, (3) was allowed reasonable time for filing and did file a written answer to the charges and (4) was furnished a decision in writing. It being very obvious that all of the procedures required by the act of Congress had been complied with, the jurisdiction of the District Court was exhausted and summary judgment was properly granted.

The charges preferred against the appellant were as follows:

(1) Charges of immoral or notoriously disgraceful conduct are hereby preferred against you, the nature of which is as follows:

(a) That during the month of March 1943, at a birthday party given in your honor in shop 23 by the women employees of your shop, you did kiss these women employees present, and made further advances to at least two of them, which actions on your part were resented by these employees.

(b) That in or near National Park, New Jersey, over a period of years, you have had abnormal sexual relations with, and have made advances to, girls in their teens; that these occurrences continued as recently as eight or nine months ago.

(2) Due to the charges as indicated above, you are hereby suspended from duty without pay pending action in your case. You are hereby given three days from the date hereof to make any reply in writing which you

consider appropriate to the charges, and to show cause why you should not be discharged.

This charge is sufficiently detailed and specific to meet the requirements of the above quoted statute. In *Bailey v. Richardson, supra*, this Court held that the charges against appellant Bailey were sufficiently specific to meet the standards required by the statute involved herein. An examination of those charges, however, reveals that they did not provide any names, places or dates to which appellant Bailey could reply with specific denials or explanations. A general denial was the only answer that could meet those charges. The Court, in holding that the charges were sufficiently specific, made it perfectly clear that the standards of the Sixth Amendment of the Constitution applicable to criminal proceedings and the requirements of the Fifth Amendment of the Constitution of due process do not have to be met in a dismissal proceeding.

While it is true that in the present case there was a Civil Service Regulation (§ 9.102, Federal Personnel Manual, Page Z-1-249) which required "This notice shall set forth, specifically and in detail, the charges preferred against him," the language of the *Bailey* case is equally applicable here with regard to the rights which appellant is now attempting to assert. This Civil Service Regulation may be compared with the regulation in *Deak v. Pace*, 88 U.S. App. D.C. 50, 185 F. 2d 997 (1950) which required that the employee be fully informed of the reasons for his removal. However, while appellant has relied upon the *Deak* case as authority for the proposition that the charges were not sufficiently specific, a careful reading of that case clearly distinguishes it from the case at bar. In the *Deak* case the charges read:

That you attended a meeting open to only Communist party members and (2) that you have attended meetings openly sponsored by the Communist party or organizations known to be affiliated with the Communist party, and have evinced active and sympathetic affiliation with these organizations. 88 U.S. App. D.C. at 51.

The generality of those charges are obvious. No time or place was set for the meeting which the employee was alleged to have attended and no names of any organizations attended were given. Hence, in order that the employee would be fully informed of the reasons for his removal and that the information would be sufficient to inform the employee with reasonable certainty and precision of the cause for his removal the Court there ordered that dates, places and names of organizations be given to the employee. It did not, however, require that the names of the persons supplying this information be given—only dates, places and names of organizations.

In considering the first charge, (that appellant during the month of March, 1943, at a birthday party in shop 23 was alleged to have committed certain actions towards several women, in particular two, which actions were resented by the women), it must be borne in mind that this particular charge specified the date, the time, the place, and, with great specificity, the particular action which was resented. This charge would indeed fall within the requirement of the *Deak* case in that it must be sufficient to inform the employee with reasonable certainty and precision of the cause for his removal. Inasmuch as this Court is not concerned with the truth or falsity of these charges, it must look only to whether or not these charges conform to the regulation requiring the charges to be set out in detail. It is submitted that they are sufficient. The charge here alleges immoral or notoriously disgraceful conduct in the advances appellant made to two women which immoral actions they resented. That this is a valid charge is obvious, and whether it is meritorious is immaterial. For as this Court said in *Levy v. Woods*, 84 U.S. App. D.C. 138, 171 F. 2d 145 (1948), “* * * that the investigation which resulted in his removal was biased, prejudiced and unfair, are immaterial.” The courts will not review the merits of a valid charge. *Carter v. Forrestal* (1949) 85 U.S. App. D.C. 53. A court of law has no jurisdiction to inquire into the guilt or innocence of the employee as to the charge upon which he was removed. *Levine v. Farley*, 70 App. D.C. 381, 107 F. 2d 191 (1939). The second charge which appellant considers “so obviously bad that

little if any discussion of it seems necessary" is also sufficient for the same reasons that the first one was. Here again the charge that "in or near National Park over a period of years, you have had abnormal sexual relations with, and have made advances to, girls in their teens; that these occurrences continued as recently as eight or nine months ago," is specific. Here again the date, (May or June 1943, i.e. eight or nine months prior to February 1, 1944, the date the charges were served upon appellant) the place and the particular actions are described with sufficient detail to inform the employee with reasonable certainty and precision of the cause for his removal. In fact, the appellant argues not the legal question of the sufficiency of the specificity of the charges, but, rather, the factual background concerning their truth or falsity, which, as we have noted above, is immaterial. The only thing not provided in these charges were the names of the persons who had supplied this information. And this is not required under either the *Bailey* case, *supra*, or the *Deak* case, *supra*.

The same question regarding the specificity of the charge in this case has previously been raised by appellant before another Federal district court, *Money v. Wallin*, 88 F. Supp. 980, and the court there held that these charges were sufficiently specific and dismissed the case. In that opinion the court said:

Under the above quoted section [5 U.S.C.A. § 652] plaintiff could only be discharged for such cause as would promote the efficiency of the service. Clearly, if the charges leveled against him were true, they would constitute such cause. Under the quoted section, he was entitled to have the reasons for such charge given in writing and *this was done and with sufficient clarity and detail to appraise him of the fundamental basis of the charges*. He was entitled to a copy of the charges, which he received, and to be allowed a reasonable time to answer in writing together with supporting affidavits. The time given in the notice of charges was three days, and he actually made answer in writing within that time. This in light of all the surrounding circumstances, particularly in view of the fact that he had been orally presented with substantially the same charges

some six days prior to formal presentation of written charges, we consider a reasonable time. Plaintiff contends that he should be granted a hearing (which is not required by the statute), the right to the complete record of the superior officer on which charges were based (which again is not required by the statute), and the right to face his accusers and cross-examine them exactly the same as if he were formally charged with crime by an indictment. The plaintiff's rights are limited by the act itself and do not involve constitutional rights of a defendant charged with crime. *In the opinion of the court procedural requirements of the statute are complied with*; plaintiff has been accorded all the rights to which he was entitled; and his discharge *was not in violation of the procedural requirements of the statute*. With the truth or falsity of the accusations, we are not concerned. *Levine v. Farley*, 70 App. D.C. 381, 107 F. 2d 186. (Emphasis supplied.)

In a subsequent consideration of the case, however, the Court held that the Secretary of the Navy had not been made a party to the suit and inasmuch as he was an indispensable party the Court dismissed the action on that ground, 89 F. Supp. 932. On appeal from that decision the Circuit Court of Appeals for the Third Circuit sustained the dismissal on the ground that an indispensable party had not been joined and did not discuss the sufficiency of the charges, 186 F. 2d 411, (3d Cir. 1951). While it is true that appellant's first action noted above terminated due to the lack of an indispensable party, it is significant to note that the District Court in that instance, after having examined the charges, held them to be sufficiently specific. As the trial court, Judge Youngdahl, in the instant case pointed out in his Memorandum (J.A. 52A):

Plaintiff relies on *Deak v. Pace*, 88 U.S. App. D.C. 50 but the Court of Appeals carefully indicated in that case that it was confined to the facts there presented. The Court there said, "What may fit the statutory requirement for full information in the circumstances of one case may be wholly irrelevant to the circumstances of other cases."

* * * * *

The Court concludes that plaintiff was fully informed of charges against him and that the defendant is therefore entitled to summary judgment.

Unless, therefore, an examination of the record shows (a) that the action of the Secretary of the Navy in removing the appellant from office was clearly a violation of some provision of law, or (b) that the Secretary of the Navy failed to observe and carry out the procedure for removal as provided by law, this Court must affirm the action of the lower court. It is clear from all the authorities that unless there be some specific statutory provision to the contrary, the action of an appointing officer in removing an employee, upon written charges and after opportunity to answer, is beyond review in the courts. In short, the courts are powerless to review the merits of a valid charge. Until Congress makes some provision to the contrary, the facts must be settled by administrative officers of Government and the trial court is not permitted to substitute its judgment for theirs, for to do so would be interfering with the discretion imposed by statute and this is the sustained ruling on that subject. In *Powell v. Brannan*, — U.S. App. D.C. —, 196 F. 2d 871 (1952), this Court said:

We think it well to reiterate that in Civil Service cases the task of the courts is a limited one. Certainly they cannot undertake to pass on a plaintiff's qualifications for any given post, or to compare them with those of an incumbent, it is not within their province to weigh the merits of a person's claim to a federal job. (Citations) Congress has established administrative machinery to make these determinations. Where there has been a substantial departure from applicable procedures, a misconstruction of governing legislation, or like error going to the heart of the administrative determination, a measure of judicial relief may on occasion be obtainable. (Citations) But no such basis for relief has here been laid.

Having Done Nothing to Effectively Assert His Claim for Reinstatement to Office for Almost Eight Years, Appellant Is Now Barred by the Doctrine of Laches

The appellant was discharged from his position on April 18, 1944, such discharge to be effective as of August 2, 1944, the date on which his accrued leave expired. Appellant did not institute the proper effective legal action until April 3, 1952, almost eight years to the day after his cause of action arose. The appellee invites this Court's attention to the fact that the appellant employed an attorney as early as January, 1944, and has been continually represented by legal counsel with the advantage of their legal advice (J.A. 35A). While the appellee does not deny that the appellant wrote innumerable letters to various persons concerning his case and sought administrative review through the Civil Service Commission, the appellee submits that appellant's only effective remedy lay in the courts from April, 1944, and as this Court said in *Grasse v. Snyder*, — U.S. App. D.C. —, 192 F. 2d 35 (1951):

We are not impressed with the plaintiff's contention that by writing vitriolic letters about his discharge to various influential people after his appeal was finally decided, he was acting diligently in a sincere effort to regain the position.

Moreover, the Court held:

It behooves a discharged employee to act diligently which plaintiff has failed to do. Plaintiff's lack of diligence under these circumstances, where detriments were accumulating against the Government, constitutes laches which bar his claim even though we could decide otherwise that there is merit in his case.

This Court in *Baxter v. Pace*, — U.S. App. D.C. —, 193 F. 2d 20 (1951) recognized the proposition that suits against the wrong parties and failure to substitute the proper parties within the proper time element is not effectively pursuing a cause of action and further that such in-

effective suits are sufficient to constitute laches. The language of the *Baxter* case would seem dispositive of the case at bar, based as it was on the history of the litigation involved in that case. There, as here, the appellant sought relief from the wrong parties and delayed his final proper action by bringing suits against the wrong parties or failing to substitute the proper parties at the proper time. For as the Court there said:

Such a delay in this type of case constitutes laches, and bars the action.

Citing *Arant v. Lane*, 249 U.S. 367; *Grass v. Snyder*, *supra*.

In *Grasse v. Snyder* this Court, in quoting from *Arant v. Lane*, stated:

When a public official is unlawfully removed from office, whether from disregard of the law by his superior or from mistake as to the facts of his case, obvious considerations of public policy make it of first importance that he should promptly take the action requisite to effectively assert his right, to the end that if his contention be justified, the Government service may be disturbed as little as possible, and that two salaries shall not be paid for a single service.

The position from which appellant was removed was one which obviously required and received a replacement. If the relief sought by the appellant is granted some present employee must be dismissed to make room for appellant and the Government could be liable, *Grasse v. Snyder*, *supra*, to pay the large sum of accumulated salary demanded by appellant in double disbursements for one position, notwithstanding appellant's assertion to the contrary.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the lower court should be affirmed.

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